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CONTENT

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A THEORETICAL APPROACH TO SUSTAINABLE TOURISM MARKETING

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Abstract

Tourism marketing focuses mainly on increasing tourism flows and further tourism development, something that has been criticized for, while contributing to the development of negative impacts, such as the natural environment, social, cultural and political environments. Integrating them would contribute to a more advanced approach to tourism marketing. This paper attempts an approach to the concept of sustainable tourism marketing, and seeks to demonstrate the feasibility of sustainable tourism marketing. Tourism management has adopted the concept of sustainability. On the contrary, the main objective in the traditional consumer marketing perspective is maximization of profit. Thus, according to Jamrozy (2007), a change of shape is required. That is why he proposes a sustainable tourism-marketing model (STMM), which will challenge the traditional tourism-marketing model. "This new sustainable marketing paradigm requires the integration of alternative approaches and radically moving towards more sustainable tourism marketing principles and practices". Otherwise, tourism marketing is an oxymoron.

Keywords: *Sustainable Tourism, Tourism Marketing*

JEL Codes: *Z33, Q56*

Introduction

Van Dam and Apeldoorn (1996) rightly observe that for marketing to play a role in sustainable economic development, a critical re-evaluation of marketing theory is required. While tourism management recognizes all the positive and negative effects, tourism marketing focuses on micromarketing issues. That is why Haywood (1990) argues that in order to revise the idea of marketing as a guiding philosophy, fundamental changes in thinking and action need to be made. In addition, Walle (1998) argues, that the macro-marketing structure, as well as its functionality (the marketing objectives), the institutions involved and the commodities (what we market) in tourism marketing, should be examined. Jamrozy (2007) points out that, for some researchers, sustainable tourism marketing is an oxymoron in sustainable tourism, as it is identified with the promotion of tourism destinations. Therefore, activities for most researchers and practitioners are limited to creating destination images with well-known standardized marketing activities (brochures, campaigns, etc.) to sell them best. There are, of course, researchers who provide a more comprehensive marketing perspective on sustainable tourism. Middleton and Hawkins (1998) state very well that marketing sustainable tourism should be geared to managing corporate behaviors in a way that balances the interests of all stakeholders with long-term environmental interests of tourism destinations, while meeting the expectations and requirements of tourists / customers. Their approach, of course, remains within the bounds of financial marketing by balancing environmental and financial interests, without being able to offer more alternatives to sustainable tourism marketing. Some marketing researchers in the mid-1980s to mid-1990s questioned traditional economic theories and explored the theories and practices of green and sustainable marketing. The same is true of tourism marketing, with Haywood (1990) and Walle (1998) being critical of its concept and demanding a "broader and more balanced view of marketing". By this, they meant to consider

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holistic approaches to tourism and to develop similar marketing practices for tourist destinations.

1. Promotion and sustainability in tourism

1.1. Types of promotional activities in tourism industry

The tourism industry is one of the fastest growing industries of the world. In context of the role of promotional activities in the tourism sector, promotion is one of the important marketing mixes that play the vital role in marketing any product or service, the importance of promotional tools in this fastest growing tourism industry is not any exception. Thus, promotional activities in context to the tourism industry could be defined as the complex links between tourism and its potential beneficiaries and process which by the use of promotional and marketing tools aim at determining potential customers and then motivate them to purchase the specific tourism product. However, there are various dynamics of the promotional activities of the tourism industry. Firstly, the industry features intangible nature of services, which in turn makes it difficult for the customers to trail and track the quality of services until they purchase any tourism activity or gather any tourism related experience. Secondly, the customers of the tourism industry are scattered all over the world, and it often makes it difficult for the tourism service providers to tell every customer individually what they have to offer to them (Kostić, M., & Tončev, J., 2014). These features of the tourism industry make it imperative to implement promotional activities. Thus, the author talks about the digitized form of promotion as the newest and most effective form of promotional strategy that is used in the industry. In this, the internet plays the key role in facilitating information exchange internationally (Arionesei G., & Paul Ivan, P., 2012). The next form of tourism promotion is through the foreign tour operators who distribute brochure, souvenirs, and tourist maps of the destinations that they are promoting for motivating potential tourists to the specific tourist destination (Niñerola et al., 2019). The third way of promotion in the tourism industry is through the process of offering discounts and rebates. In this, destination tourism management companies offer several discounts in the form of options like discounts on air tickets fares, accommodation and transportation on group tours and long stay visits. Among the other forms of promotion prevalent in the tourism industry are promotion through public relations, direct selling of tourism products, print and electronic media advertising, direct marketing and personal selling through travel agents (Arionesei G. & Paul Ivan, P., 2012; Lai and Vihn, 2013).

1.2 The importance of sustainable tourism

In the context of sustainable tourism, it needs to be indicated that a unique feature of this industry is that tourism activities have significant impact upon natural resources, consumption patterns, pollution and socio-economic systems. It can further be said that this fastest growing industry of the world and the resources upon which it is primarily dependent are the natural resources. In addition, the tourism industry is also dependent upon the cultural and historical resources of a region as well. Thus, while on one hand the share of contribution of the tourism industry to the global economy is quite high, its negative enact upon the natural ecosystem could not be denied either (Kostić, M., & Tončev, J., 2014). In gist, the long-term environmental concerns of tourism can be summed up as pollution, degradation of the destination, damage to the biodiversity, negative impact upon the resident communities among others. Overall, in the longer-term extreme environmental impact owing of the tourism activities can hurt the future economic development of the destination (Niñerola et al., 2019). Thus, sustainable tourism emerged as a modern trend in tourism in 21st century with prominent organizations taking the lead load in promoting it (Kostić, M., & Tončev, J., 2014). For instance, in 1983 the Ceballos Lascurain of the International Union for Conservation of Nature

proposed this concept of eco-friendly tourism, which was further enriched by the World Tourism Organization in 1998. Further, during this time sustainable tourism was also promoted as a form of tourism development of the 21st Century in an official program of United Nations Agenda 21 (Kostić, M., & Tončev, J., 2014).

The sustainable tourism is broadly categorized into economic, environmental and social or socio-cultural dimensions (Castellani, V. & Sala, S. 2010; Torres – Delgado & A., Palomeque, F.L., 2014). Actually, these dimensions of sustainable tourism develop due to the close relationship of tourism development with social, economic and environmental development of a region. It implies that if the tourism sector of a region develops sustainable practices, it must be economically feasible, ecologically fragile and culturally suitable (Khuntia, N. & Mishra, J.M., 2014). Economic dimension is significant from the standpoint that encouragement of such tourism activities results in economic development of the region. Economic dimension of sustainable tourism refers to the net long-term economic development of the local economy of a region due to tourism promotion (Garrigos – Simon, J. et al, 2015). For instance, sustainable tourism management processes in a region results in the generation of a source of income for the local community through generation of additional number of jobs and eventual domestic capacity building of the locales. This in turn leads to poverty reduction in the local community largely.

The core concept of sustainable tourism is to set balance between the consumption of natural resources and regenerative capacity of natural systems that tourism exploits simultaneous with meeting the economic, social and cultural objectives of a particular community. Thus, while the fundamental principle of sustainable tourism is to promote tourism simultaneous with taking measures for limiting its harsh effect on the environment and ecology, it is not only limited to the proper utilization of the environment. Rather, sustainable tourism also implies attaining sustainability measures in cultural, social, and economic aspects connected to tourism.

2. The historical evolution of marketing

The historical evolution of marketing is recorded starting from a production and sales oriented towards a more consumer oriented marketing approach. The latter still dominates much of today's marketing activities. Merchants determine the needs and desires of customers and develop product and segmentation strategies accordingly. For years, the dominant definition of marketing has been; “The process of planning and executing the concept, pricing, promotion, and distribution of ideas, goods, and services to create exchanges that satisfy individual and organizational objectives”, (AMA 1985, in Keefe 2004). Which focused on the process of exchange between the customer and the organization and design of the marketing mix. Striving for a more social approach brought a revised definition: “Marketing is an organizational function and a set of processes for creating, communicating, and delivering value to customers in ways that benefit the organization and its stakeholders” (Keefe, 2004). Finally, the following definition were approved by the American Marketing Association Board of Directors: “Marketing is the activity, set of institutions, and processes for creating, communicating, delivering, and exchanging offers that have value for customers, clients, partners, and society at large” (AMA, Approved July 2013).This revised definition maintains the perspective of stakeholders and does not limit the scope of marketing to organizations. The roles of institutions and processes, as well as the impact of marketing on society, are clearly recognized. In addition, the revised definition avoids stating that marketing is about "managing" customers or relationships. It includes both the traditional promotion (exchange example) and the current (value creation example) (Sheth, J. & Uslay, C., 2007).

Nevertheless, there are alternatives that have emerged because of other approaches, such as social, environmental, green, sustainable, etc. There is no conceptual consensus among researchers about this and they are used in research but practically different terminology at will. This resulted in options such as:

Societal marketing

Societal marketing has emerged as an extension of previous marketing approaches, extending beyond customer satisfaction to "society's well-being" (Kotler and Armstrong, 1990). Accordingly, the AMA (www.ama.org) defines social responsibility as ". . . the obligation of marketing organizations to do harm to the social environment and, wherever possible, to use their skills and resources to enhance that environment. Comment: Social responsibility of marketing is also called societal marketing". Because of this, the term societal marketing is often confused with social or cause marketing, which states: "… the branch of marketing is concerned with the use of marketing knowledge, concepts, and techniques to enhance social ends. Consequences of marketing strategies, decisions, and actions. This type of marketing is designed to influence the behavior of a target audience in which the benefits of the behavior are intended by the marketer to primarily target the audience or the general public and not the marketer (www.ama.org)".

However, it is concluded that to do no harm and enhancement of the social environment is the social responsibility of all organizations and consumers in the process, and applies to everyone, for-profit, public, and private non- profit organizations and individuals. All research studies investigating the social marketing approach to tourism examine the importance of social responsibility and the interaction of environmental and financial accountability for all social groups. Beyond the "no harm" approach, social tourism marketing can actively "communicate" the benefits of tourism to society and "promote an understanding" of social justice and issues through tourism.

Economical marketing

"Economical marketing" sounds superfluous as marketing pursues primarily financial goals. "Sustainable marketing" is regarded as an oxymoron, as marketing is perceived as inherently unsustainable. Both views recognize "marketing" as an activity to promote consumption and economic growth. Within the Western lifestyle's belief structure, "quality of life" is often measured as a "standard of living" which in turn depends on increased economic activity, income and growth. Therefore, marketing promotes exchange processes leading to higher living standards. Industry produces more products for a very consumer society. The quality of life of individuals and society seems to depend on consumption. Previous definitions of marketing focused on micromarketing activities to optimize these exchanges. The approach to financial marketing considers the physical, social and cultural environments as external influences, influencing but not guiding marketing strategies. Therefore, the search for solutions to the environment and environmental social problems occur within the context of the Western lifestyle. Examples of such approaches are the economic valuation of natural resources and the attitude, "if you make money, it makes sense to protect the environment". Most of the planning, development and implementation of tourism marketing strategies follow the economic example.

Environmental marketing

The concept of Environmental, Green or Ecological marketing gained momentum during the 1990s to intensify products and production methods that improve environmental performance, promote ecological causes or solve environmental problems. This has been due to the growing demand for environmentally friendly products and services. Therefore, supply had to respond by organizing production in an environmentally sensitive and responsible way, in order to protect the environment, according to the needs and desires of consumers.

Environmental, Green or Ecological marketing is part of new marketing approaches that increase change, enhance or expand the existing marketing approach and seek to offer a substantially different perspective (Banerjee, S., 2015).

The American Marketing Association (www.ama.org) does not specifically define environmental marketing, but concludes, "Environmental impact analysis is the assessment of the impact of a strategy or decision on the environment, in particular the ecological consequences of the strategy or decision». This statement underlines the producer's responsibility not to do harm to the environment. However, the efforts of Environmental, Green or Ecological marketing (terms used alternatively) are not only about protecting resources but also focusing on environmentally friendly products and on production, recycling and reuse.

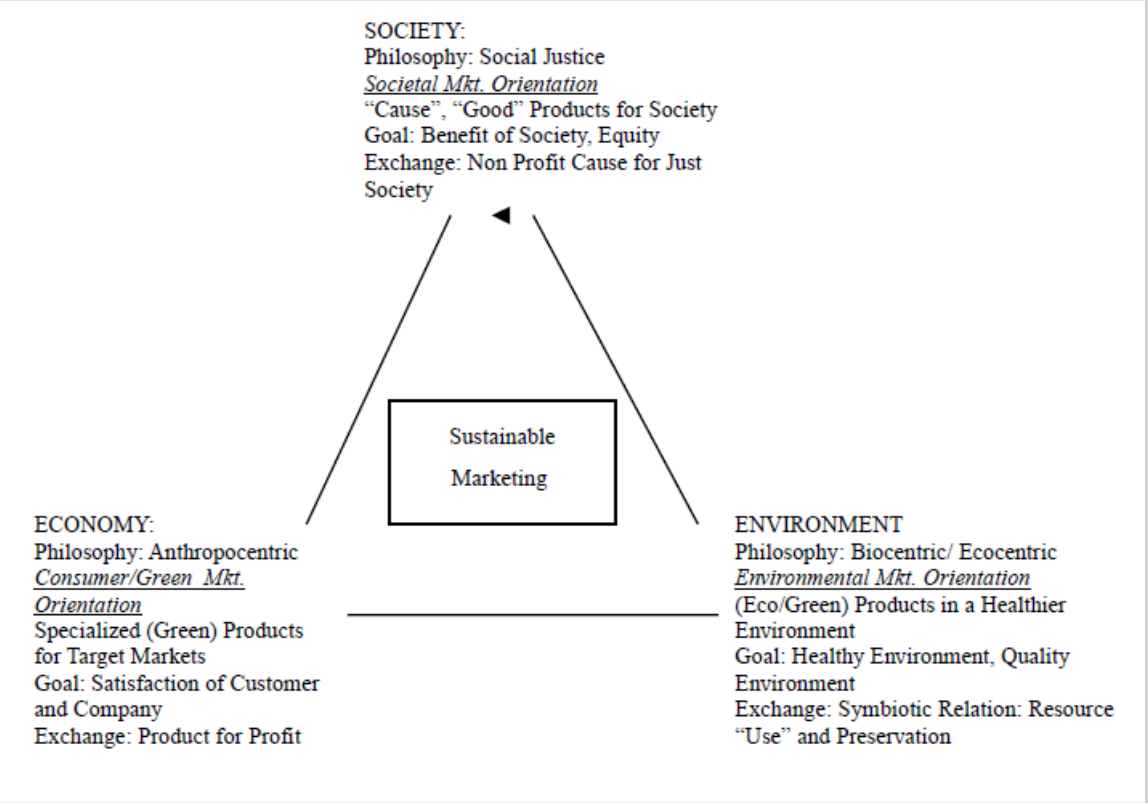
Middleton and Hawkins (1998) provide an overview of sustainable tourism industry practices and explain the philosophy, concepts and principles of a more sustainable marketing approach. Tourism is directly dependent on natural resources as they are necessary for the design of services, experiences and activities, so environmental marketing is directly related to them. It is also applied (environmental marketing) to the hotel industry as well, especially when businesses favor environmentally conscious activities (e.g., energy saving, recycling, etc.) but also trying to create an environmental consciousness.

One variant of environmental marketing is "green marketing", which also presents a consumer-oriented strategy. In this case, it makes "economic sense" by targeting the "green" consumer who needs "green" products. Often, ecotourism marketing adopts this approach, especially when marketing the "exclusive ecotourism". Eco-labeling then establishes the practice of branding in the context of financial marketing paradigm. In many cases, managers use ecotourism and sustainable tourism as alternatives because of their emphasis on environmental protection.

The sustainable tourism-marketing model

According to the World Commission on Environment and Development (WCED, 1987), the mission of sustainable development is to meet the needs of the present, without jeopardizing the ability of future generations to meet their own needs. And to achieve this, environmental health, economic viability and social justice are essential. The fact is that tourism management has adopted the concept of sustainability, as opposed to the traditional consumer marketing perspective, in which profit maximization is the main objective. However, to be sustainable, marketing must also incorporate social, consumer and environmental perspectives. Thus, according to Jamrozy (2007), a change of shape is required. That is why he proposes a sustainable tourism-marketing model (STMM), which will challenge the traditional tourism-marketing model. “This new sustainable marketing paradigm requires the integration of alternative approaches and radically moving towards more sustainable tourism marketing principles and practices” (Jamrozy, 2007, p. 118). His model (Fig. 1) reflects the principles of sustainable development based on the Brundtland report (WCED, 1987) and “represents the three dimensions of sustainability, economic viability, social equity and environmental protection”.

Figure No. 1 Sustainable tourism marketing triangular model



Source: Jamrozy, 2007, p. 124

Conclusion

The sustainable marketing approach of Jamrozy incorporates environmental, social and economic goals, as opposed to the traditional economic marketing approach that is limited to traditional consumption philosophy with a single focus on profitability and is obviously unsustainable. The model does not require a complete balance between the three dimensions, but recognizes that different situations require different focus and that focusing on only one dimension would limit the potential for sustainable tourism marketing. Thus, the unique features and needs of each tourist destination separately require a different approach, with necessary marketing involvement in planning, management and development. A marketing of course, the design, strategies and mixes have been redefined in accordance with the above principles.

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THE EQUALITY PRINCIPLE IN LABOUR AND SOCIAL SECURITY LAW TRADITIONS AND MODERNITY

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Abstract

The paper examines the equality principle as a general principle of Bulgarian labour and social security law. The focus of the research is on the existing legal frameworks related to its contemporary normative manifestation.

In conclusion the authors outline tendencies in the evolution of the equality principle in terms of national regulation and synchronization with international norms.

Keywords: *principles of labour law, principles of social security law, equality principle, Conventions of the ILO*

JEL Codes: *K31, K32*

Introduction

The regulation of societal relations within the field of labour and social security law is based on legal principles. In modern legal systems the number of these principles is growing and this is relevant to all legal branches, which requires, apart from good knowledge at the legal branch level, the study of their correlation and priority application in specific cases.

The principles of law are social categories perceived primarily from a doctrinal perspective. Accordingly, they seem not to be prioritised in the everyday practice of applying the norms of the relevant legal branch. The courts increasingly refer to a legal principle underlying their judgements. In other words, tradition in law is sustainable and connected with the undying interest in the nature and application of legal principles in terms of their social, legal and moral significance, but it is also evolving. Legal principles follow and reflect the dynamism and spirit of a particular time and thus of the societal relations governed by them. This is true both for legal principles in general and for the principles of labour law, which today are subject to processes that were unknown at the time of their enshrinement in international and domestic legal sources. Legal principles are normally associated with values and most of them have to do with morality. In Bulgarian labour law these principles are associated with moral aspects and ethnopsychology. The work-related values of Bulgarians are an impetus for the realization of the legal principle enshrined in the legal norm. This was the case in the time before the fourth industrial revolution. The current stage of social development is directly influenced by digitization and globalization processes and this affects peoples' values. In this respect the legal principles are also undergoing their evolution and need the protection of the State in order to subsist.

The topicality of the selected subject is determined by several reasons. On the one hand, legal principles are a central category in law and their study and the insight into their nature in terms of the relevant type of societal relations are permanently topical. Secondly, the impact of digitization and globalization changed the dynamics of the development of social processes, which is relevant also to the transformation of legal principles. From a doctrinal perspective it is precisely legal principles that guide us from the genesis of knowledge to modernity.

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At the end of the previous and the beginning of this century the legal theory started to pay more attention to this subject and, not coincidentally, it is considered one of the most discussed topics in legal literature (Maltsev, 2007, p. 661). The study of legal principles within the different legal branches is particularly important in view of the specifics of their manifestation and their practical application.

The subject of this study is the principle of equality in the current national legislation, in terms of the nature and specifics of its manifestation in labour and social security law.

The aim of this paper is to analyse the principle of equality and its significance for Bulgarian labour and social security law. On the basis of an analysis of the legislation the authors examine the role of this principle in the sources of the above-mentioned legal branches. The emphasis of the research is put on an analysis of current legal frameworks and the related trends in regulation and development in doctrinal and practical aspect.

For this purpose the authors have taken up several **research tasks** determining the structure of this paper, in particular: 1. Explore and analyse the principle of equality in Bulgarian labour law, focusing on current functions and manifestations; 2. Explore and analyse the principle of equality in Bulgarian social security law; 3. Draw conclusions and identify trends in the evolution of the principle in the aspect of its national framework and its synchronization with international and European principles.

To achieve the objectives and complete the research tasks the authors have primarily used the following methods: analysis of legislation, comparative legal research, historical approach and others.

The analysis was performed with priority on the plane of existing Bulgarian legislation and is concentrated around two axes, namely the manifestation of the legal principle in the two above-mentioned legal branches. This determines the structure and arrangement of the study, but in spite of this internal differentiation, both parts of the study are intended to function as a whole, where the first part, namely the analysis of the equality principle in labour law, serves as introduction, given its historical precedence and in view of the derivative nature of social security in relation to labour.

For the purpose of proper understanding of the analysis of the legislation, the authors have made some non-exhaustive clarifications and general notes on terminology.

The research is in line with labour and social security legislation existing as at 15 June 2019.

1. The principle of equality in Bulgarian labour law

In order to determine the nature of the fundamental principles of Bulgarian labour law, doctrinal studies have been conducted since the inception of the legal branch, each study having contributed to the clarification of the general concept and the specifics in the manifestation of the relevant principle. In the context of achieving the aim set in this study we will start by clarifying the terminology, based on a definition given by the eminent Bulgarian scholar prof. L. Radoilski: "These are fundamental solutions acknowledged by the legislation, which pervade, are contained in and stem from the legal framework of labour relations" (Radoilski, 1957, p. 67-69). They embody universal human values that have passed the test of time and undergone their evolution along with the development of law. The principles of Bulgarian labour law are related to the achievements of the international community, from the period of creation of the legal branch through the stages of its development in line with the economic and political conditions in the country. At present this translates into alignment with the labour law of the European Union and its Member States (Mrachkov, 2018).

The principle of equality refers to the basic principles of labour law and in this regard it is important for labour law doctrine and practice. This study places the principle

predominantly at the level of scholarly research and is aimed at analysis and understanding of its manifestations in specific provisions of the legislation. In this sense, the principle has undergone its development in the law and its genesis has helped improve the labour law jurisprudence.

Equality of rights within labour law is based on the general principle of equality and builds on its values. The modern development of both principles is related to the desire to create a welfare state (Drumeva, 2013, p. 135-138), (Tanchev, 2007, p. 325-343) whose policy enshrines the exercise of basic social rights. In this context, the welfare state is seen as a model of governance that reflects the new understanding of the responsibility of the government for the welfare of the population (Blagoycheva, 2016, p. 23).

Equality in law is the basis to build on and its transformation leads to its cloning into a variety of legal forms relevant to the various societal relations. In this regard, we join the opinion of Yanaki Stoilov, who defines equality as a measure (Stoilov, 2018, p. 261). Such measuring is typical for labour law relations and the reciprocity of what is given and received within the legal relationship between employee and employer, as contemplated in the provisions of this field of law.

As already mentioned, equality is the basis on which equal standing in the employment relationship builds. The principle of equality is extensively regulated in legal sources, starting from international instruments: Article 2, Para. 2 ICESCR, ILO Conventions - 111 since 1958 concerning discrimination in employment and positions, and 100 conventions on equal pay since 1951.

Article 6, Para. 2 of the Bulgarian Constitution proclaims the equality of citizens before the law and non-discrimination based on criteria exhaustively listed in the provision. In the field of labour law, these criteria are elaborated through regulation at the statutory level: Labour Code (Article 8, Para. 3), the Protection against Discrimination Act (Articles 12 to 28).

The principle of equal standing is an emanation of the legal equality on the plane of labour relations. Its main manifestations are on several levels that build on the idea and develop it throughout the stages of interaction between the parties.

First comes the equal treatment of parties that can enter into an employment relationship, i.e. equal ability of all individuals to participate as employees. This corresponds to the equal standing of the other party, i.e. the employers' ability to hire "another's workforce".

The second step in the development of the principle of equality in labour law is in the phase of an existing legal relation. At this stage, the essence of the principle consists in granting equal rights to and imposing equal obligations on the parties to the legal relation.

The third manifestation of the principle takes place on the plane of its protective function and is expressed in equal protection of infringed rights and interests.

While summarizing these three manifestations of the principle of equality emerging in the course of the employment relationship we should not ignore its importance to the modern democratic society and for the development of labour law going back to the stage of its genesis and the struggle of the weaker party in the legal relation, i.e. the employee, for "equality".

The method of equal standing in labour law refracts through the prism and the specifics of the legal branch. It is this principle that embodies the application of the method in the regulation of relations between parties.

The employer in such capacity is the party responsible for the organization and leadership of the labour process. In this connection, the employee appears to be in a position of subordination in the context of employment. This subordination cannot give rise to restrictions on the scope of the principle of equality at the stage of an existing legal relation, because it is organizational and technical in nature, not a manifestation of authoritative functions conferred by the State.

As regards the weaker party in an employment relationship, the State uses additional legal methods of achieving a balance with the other party. It is precisely for the purpose of such legal "equality" that the legal norms superimpose the principle of protection of labour. This principle guarantees the horizontality of the standing of employers and employees.

2. The principle of equality in Bulgarian social security law

While the principle of equality in labour law is manifested on the plane of the legal relations between the parties to an employment relationship, i.e. employee and employer, and concerns equal rights and obligations, in social security law this principle has different manifestations, mainly related to the specificities and role of the social security system. As an enduring legislative scheme guaranteeing and protecting basic human needs and focusing on the subsistence of the individual, the social security system is based on the principles of solidarity and equal treatment of insured persons, social dialogue in the governance of the social security system and organization of social security funds. It was introduced and sustainably established as a response mechanism in the event or emergence or stabilization of insured risks, and it meets a few basic requirements while observing the principle of equality of the persons insured. In the broadest sense, these boil down to the following: comprehensive and adequate protection of the person insured, corresponding to their social security contributions; long-term maintenance of persons in the event of persisting disability, as well as adequate medical assistance and prophylactic and ancillary benefits within health insurance.

In evolutionary aspect, based on the two models - of Bismarck and Beveridge, the social security system developed in two main directions: a social contract between generations and social groups, based on solidarity, reciprocity, interdependence and equality in the use of the social security service, as contemplated in the Bismarck model, and, on the other hand, universality and comprehensiveness with maximum scope of State involvement in the Beveridge model (Yolova, 2016).

As a direct emanation of the constitutional principle of equality, the principle of equal treatment is enshrined in social security laws, in particular Article 3, Item 3 of the Social Security Code (SSC), Article 5, Item 5 of the Health Insurance Act, and Article 283 SSC. Its development in philosophical and social terms and through the prism of the general concept of equality before the law reveals certain specifics of its understanding and implementation. Insofar as the basis for its development and durable enshrinement concerns closely the principle of legal equality as a projection of equality before the law (Mikhailova, p. 71), the principle of equal standing should be regarded as equal treatment of insured persons in their utilization of social security and health insurance benefits. The latter predetermines its examination in terms of **non-discriminatory application of norms, but one that is closely tied to the social security and health insurance status of the individual, i.e. whether they have performed their obligation to pay the respective contribution as grounds for the exercise of a specific individual right.**

Thus, in particular, and insofar as the status of being insured is a direct prerequisite for enjoying social security and health benefits under equal conditions, the principle of equal treatment manifests itself **in several fundamental aspects, namely**:

- ✓ Equal conditions for providing and receiving insurance benefits, subject to the eligibility of the relevant person as prescribed by the specific statutory provision
- ✓ Variations in the nature, scope and size of social security benefits based solely on the criteria social security earnings and entitling length of service (Sredkova, 2012, p. 119)
- ✓ Non-discriminatory systematics and unity in the procedures for exercising social security rights

✓ Determining the amount of short-term benefits based only on the nature of the social security event and the relevant degree of eligibility

✓ Non-discriminatory (except for the special characteristics age and gender) conditions for entitlement to and provision and utilization of long-term social security benefits.

✓ Priority of equal treatment in the use of medical care, in particular packages of health services guaranteed by the budget of the National Health Insurance Fund (NHIF), available to all insured persons within the scope and under the terms and conditions set out in the National Framework Agreement, in view of the authoritative interpretation laid down in Decision No. 32 of 26 November 1998 of the Constitutional Court in Constitutional Case No. 29 of 1998, which introduced as a general principle "the entitlement to medical treatment of all citizens in the event of sickness and equal conditions and equal opportunities for use of the treatment".

However, the principle of equal treatment should not distance itself from the general philosophy and understanding of the social role of the social security system in the aspect of its correlation to **mechanisms of social protection**. It should not be overlooked that such social security system, based on the concept of social justice and social solidarity, aims at providing benefits also to non-contributing individuals as a result of the responsiveness and solidarity of the system towards needy uninsured, and in light of the understanding of civil inclusion and shared public risk (Yolova, 2016, p. 183).

The current trend is for equality and equal treatment to be examined through the prism of social equality philosophies, given that the social security system should to a large extent function also as a social protection system. In that sense, there is a tendency for the **principle of equal treatment to shift from equality of conditions** (Stoilov, 2018, p. 287) **to fair social environment**. Such social function is especially visible in the implementation of the principle of equality at the level **of the European Communities policies**, where the philosophy in understanding the values of the new social order is enshrined in the **European pillar of social rights**, created on the basis of the Interinstitutional Proclamation by the European Parliament, the Council and the Commission at the Social Summit in Gothenburg on 17 November 2017. The Proclamation states that "the aim of the European Pillar of Social Rights is to serve as a guide towards efficient employment and social outcomes when responding to current and future challenges which are directly aimed at fulfilling people's essential needs" (Opinion of the Economic and Social Council on the European pillar of social rights and the role of organized civil society, 12 March 2018). The European pillar of social rights contains twenty principle rights, which are divided into three large groups, where the **Social protection and inclusion** group includes Childcare and support to children, social protection, unemployment benefits, minimum income, old age income and pensions, healthcare, inclusion of people with disabilities, long-term care, housing and assistance for the homeless, access to essential services. In this context and in view of the **aspects of application of the principle of equality at the level of social protection, the following key points have been established**:

Equality under comparable conditions - it is proclaimed that "Regardless of the type and duration of their employment relationship, workers, and, under comparable conditions, the self-employed, have the right to adequate social protection."

Minimum eligibility requirements - in particular it is determined that "Everyone lacking sufficient resources has the right to adequate minimum income benefits ensuring a life in dignity at all stages of life, and effective access to enabling goods and services."

Long-term entitlement - in view of the principle "Workers and the self-employed in retirement have the right to a pension commensurate to their contributions and ensuring an adequate income. Women and men shall have equal opportunities to acquire pension rights",

but at the same time "**Everyone in old age has the right to resources that ensure living in dignity**".

Affordable health care - in view of the proclamation that "Everyone has the right to timely access to affordable, preventive and curative health care of good quality." Similar points are expressed in the Opinion of the European Economic and Social Committee called "Impact of the digital healthcare revolution on health insurance" of 20 September 2017, which emphasises the need to maintain and ensure, respectively preserve and promote solidarity-based, inclusive and non-discriminatory health insurance systems in coordination with and in implementation of the principles of equal access, high quality of healthcare, universality and solidarity as a condition for universal health insurance.

There is a clear trend in that the consistent application of the principle of equal treatment under equal conditions for entitlement does not exclude social protection in the aspect of justice and social solidarity. There is a steady shift in the principle – from equality in entitlement to equality in terms of social justice. This is also the essence of the social protection strategies developed by the World Bank (2001), which give priority to mechanisms aimed at "providing better protection for vulnerable social groups in order to enhance justice (justice-based system of legal principles) and at reduction of extreme poverty" (Andreeva, A., Yolova, G., 2018, pp. 293-307). Thus, given the new understanding of the balance of social justice, the principle of equality subject to entitlement should not be considered unchangeable; it should be understood as extended scope of social protection in the light of social solidarity.

Conclusion

The study conducted on the principle of equality in the two legal branches - labour law and social security law, allows us to draw certain conclusions and identify trends in their development.

It is undisputed that the establishment, development and permanent enshrinement of the principles in legal norms and practice follow a tendency of consistency and equal guarantees mechanisms. Although the principle varies in its nature given the essence and manner of establishment in the two legal branches, we should not overlook the fact that the current development of labour and social security legal relations is itself facing the challenge of displacement of the main characteristics and the transformation the principles in the light of new social realities. **In this respect we can outline several main conclusions**:

1. The principle of equal standing in the field of labour law evolves while preserving the tradition of continuity and upgrade. Building on the basic principle of equality, it develops and specifies the employment relationship.

2. In the modern period of social development labour law evolves in a direction following the pace of the fourth industrial revolution. In this respect, at the national level we see adjustments to specific labour law constructs and enhanced impact of legal principles. This applies to the full extent also to the principle of equal standing.

The State, acting through its government bodies, is the normative regulator of societal relations in the sphere of labour. At the same time the State can be viewed as an employer of the highest order. This is not directly reflected in the principle of equal standing, but is indirectly imposed by way of all the guarantees for creating an environment of parity of the parties to an employment relationship.

3. There is a permanent transition of the understanding of fair contribution in the utilization of social security benefits to equality in the aspect of social justice. The latter is especially typical in formulating the principles of social protection at the Community level, where the emphasis, in view of the principles of minimum entitlement and affordable health care, is on "everybody", and not only on the persons insured.

4. The tendency of applying principles of equality in social security law is ever more often linked to the response mechanism of the welfare state at the level of highlighting the role of social security, given its protective social role.

While the principle of equality has a different nature and manifestations in labour law and social security law, respectively, new social realities create and promote a new specific category of social rights, where the principles of the two legal branches meet. It is in this sense that the principle of equal standing in labour law and social security law is most clearly identified, in terms of the recognition of the so-called third generation social rights (Stoilov, 2018, p. 151), and in particular given the right to social security and minimum income, common for both legal branches. In this regard the focus is rightly placed on the issue of minimum basic income as part of a minimum level of social security of individuals, and in particular on the role of the State as employer of last resort where jobseekers cannot find any work (Stoilov, 2018, pp. 151-152). Internationally, at the present time this is only possible in developed countries, which have both the economic ability and social policies in place. Currently, in Bulgarian labour and social security law this issue is dealt with only on the field of legal doctrine, as the country has not yet reached a level of development allowing implementation in practice.

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FISCAL AND MONETARY DETERMINANTS OF THE EURO AREA'S GROWTH AND CYCLICAL RECURRENCE

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Abstract

The objective of this article is to study the opportunities for managing economic growth and business cycle in the Economic and Monetary Union. The fiscal and monetary determinants of growth and cyclical recurrence in the Euro Area, their size and impact direction have been identified by a vector autoregression. Recommendations have been made on macroeconomic policies, which stimulate growth and smooth out cyclical fluctuations in the Euro area.

Keywords: *Euro area, economic growth, business cycle, fiscal policy, monetary policy, vector autoregression*

JEL Codes: *E32, E52, E62, F43, 047*

Introduction

The Economic and Monetary Union (EMU) is not fully operational yet. Despite the considerable improvement of the design and architecture of the Euro Area (EA) over the last years, the lack of a common fiscal policy and the incomplete mandate of the European Central Bank (ECB) - focused only on price stability, but not on full employment, severely limits the options of policymakers to stimulate growth and smooth out the business cycle.

Macroeconomic policies in the EA are broadly discussed in economic literature (Franks et al., 2018; Jarociński and Maćkowiak, 2017; Orphanides, 2017; Vijselaar, 2000; Mooslechner, 2017; Neck and Haber, 2007; OECD, 2014; Hein and Detzer, 2015; Kamps, 2017 and many others).

The goal of this research is to analyze the opportunities for managing growth and cyclical recurrence in the EMU. It has been achieved through the fulfilment of the following tasks:

- Identification of the fiscal and monetary factors of the EA's economic growth (Section two);
- Identification of the fiscal and monetary determinants of the EMU's business cycle (Section three);
- Formulation of recommendations on fiscal and monetary policies, which stimulate growth and smooth out cyclical fluctuations in the EA (Conclusions section).

The methods of the vector autoregression (VAR) and the Hodrick-Prescott filter (HPF) are employed in the study. Quarterly seasonally adjusted Eurostat data for the period from the first quarter of 2002 to the fourth quarter of 2017 are used. All indicators are calculated as a percentage of actual real Gross Domestic Product (GDP), except for the output gap, which is calculated as a percentage of potential real GDP. Potential output is estimated using a HPF.

All variables are tested for stationarity. If it is found that they are integrated of the first order, tests are made for the optimal number of lags and co-integration of Johansen. The optimal number of lags is used in the Johansen co-integration test and later in the construction of the VAR. If the Johansen test demonstrates a co-integration connection between variables, a restricted VAR, also known as a Vector Error Correction (VEC), is applied. Otherwise, an unrestricted VAR is employed.

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The short-term cause-and-effect relationships between the variables are analyzed via the Pairwise Granger Causality Tests, and long-term causal links through the Granger Causality / Block Exogeneity Wald Tests. Impulse Response charts are produced to show how the target variables (the real GDP growth rate and the output gap) respond to fiscal and monetary shocks.

1. Fiscal and monetary factors of economic growth in the EA

The fiscal and monetary determinants of the EA's economic growth have been identified by vector autoregression, in which participate the following variables: **GDPGR** – growth rate of real GDP on the previous year; **FISC_BAL** – fiscal balance; **GOV_DEBT** – government debt; **GOV_EXP** – government expenditure; **GOV_REV** – government revenue; **INT_RATE –** interest rate on the main refinancing operations of the ECB; **MRR** – minimum reserve requirements. The target variable is **GDPGR**.

Table no. 1 – Group unit root test on the level values of variables

Method	Statistic	Prob.**	Cross sections	Obs.
Null: Unit root (assumes common unit root process)				
Levin, Lin & Chu t*	-0.37082	0.3554	7	434
Null: Unit root (assumes individual unit root process)				
Im, Pesaran and Shin W-stat	0.02609	0.5104	7	434
ADF - Fisher Chi-square	14.0221	0.4481	7	434
PP - Fisher Chi-square	14.2168	0.4337	7	441

Source: Prepared by the author

Table no. 2 - Group unit root test on the first differences of variables

Method	Statistic	Prob.**	Cross sections	Obs.
Null: Unit root (assumes common unit root process)				
Levin, Lin & Chu t*	-15.0135	0.0000	6	367
Null: Unit root (assumes individual unit root process)				
Im, Pesaran and Shin W-stat	-13.9083	0.0000	6	367
ADF - Fisher Chi-square	160.433	0.0000	6	367
PP - Fisher Chi-square	205.402	0.0000	6	372

Source: Prepared by the author

The group unit root tests (see Tables 1 and 2) indicate that variables are integrated of order 1. The optimal lag-length for the Johansen co-integration test and for the VAR estimation is one lag (see Table 3). The Johansen co-integration test shows that variables are co-integrated and there are five co-integrating equations, therefore a restricted VAR (a Vector Error Correction) is applied.

Table no. 3 - VAR Lag Order Selection Criteria

Lag	Schwarz information criterion
0	11.55068
1	2.346009*
2	4.217308
3	5.634153
4	7.164394
5	6.297604

** indicates lag order selected by the criterion*

Source: Prepared by the author

The equation for the target variable **GDPGR** in the vector error correctionmodel after the removal of the statistically insignificant variables is

(1)D(GDPGR) = -0.45*(GDPGR(-1) + 0.06*INT_RATE(-1) - 0.35*MRR(-1) + 0.15) + 0.71*(FISC_BAL(-1) + 0.13*INT_RATE(-1) + 0.08*MRR(-1) + 2.58) - 0.08*(GOV_DEBT(-1) + 5.71*INT_RATE(-1) + 11.10*MRR(-1) - 106.44) + 0.71*(GOV_EXP(-1) - 0.14*INT_RATE(-1) + 2.45*MRR(-1) - 51.83) - 0.40*D(FISC_BAL(-1)) - 0.45*D(GOV_EXP(-1)) + 0.02

The first four terms in Equation (1) are error correction terms, which show long-run relationships between the dependent variable and the independent variables. The regression coefficients before the first and the third term are negative and indicate the speed at which the deviations from the long-run equilibrium between the dependent variable andthe independent variables in the error terms are eliminated. The value of -0.45 of the first coefficient means that 45% of the deviation from the equilibrium between **D(GDPGR), GDPGR(-1), INT_RATE(-1)** and **MRR(-1)** are eliminated for one period (quarter). The value of -0.08 of the third coefficient implies that 8% of the deviation from the equilibrium between **D(GDPGR), GOV_DEBT(-1), INT_RATE(-1)** and **MRR(-1)** are corrected for one period (quarter).

The second and the fourth coefficients are positive and show the rate per period, at which a deviation from the long-term equilibrium will increase. The value of 0.71 of the second coefficient suggests that the deviations from the long-run equilibrium between **D(GDPGR), FISC_BAL(-1), INT_RATE(-1)** and **MRR(-1)** will grow by71% per period. The value of 0.71 of the fourth coefficient implies that the deviations from the long-run equilibrium between **D(GDPGR), GOV_EXP(-1), INT_RATE(-1) and MRR(-1)** will rise by71% per period.

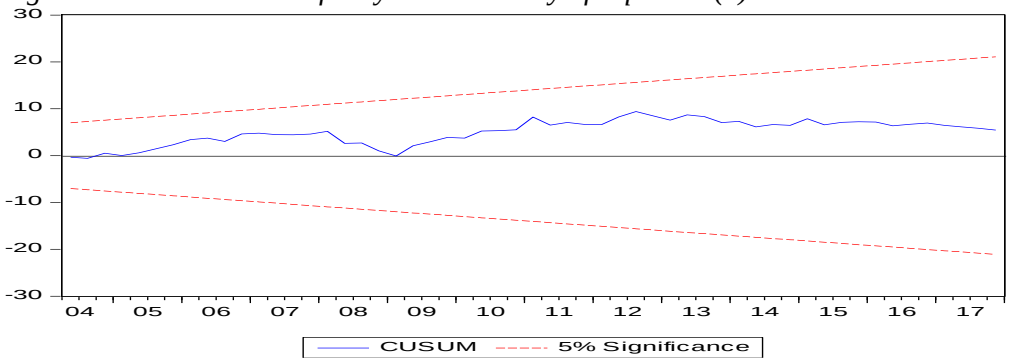
The fifth and the sixth terms are short-run. The value of the fifth regression coefficient (-0.40) means that in the short term 1% change in **D(FISC_BAL(-1))** will lead to a 0.40% change in **D(GDPGR)** in the opposite direction, if all other variables are held constant. The value of the sixth regression coefficient (-0.45) means that in the short run 1% change in **D(GOV_EXP(-1))** will cause a 0.45% change in **D(GDPGR)** in the opposite direction, if all other variables remain unchanged. The seventh coefficient is the constant, which has a value of 0.02.

The value of the coefficient of determination (0.49) shows that 49% of the changes in the EA economic growth can be explained by changes in the explanatory variable participating in Equation (1). The probability of the F-statistic (0.00) indicates that the alternative hypothesis of the adequacy of the regression model is accepted. The acceptance of the alternative hypothesis does not mean that the model specification is the best possible but only that the regression model adequately reflects the relationship between dependent variable and independent variables.

The serial correlation LM test (Chi-square probability of 0.0414) confirmed the zero hypothesis of the absence of a serial correlation of residuals at the 1% significance level. The residual heteroscedasticity test (Chi-square probability of 0.0430) confirmed the null hypothesis of the absence of heteroscedasticity in Equation (1) at the 1% significance level. The requirement of normal residual distribution is observed in Equation (1). The probability of the Jarque-Bera statistic is 0.69, which gives reason to accept the zero hypothesis of a normal residual distribution. The CUSUM Test indicates that Equation (1) is dynamically stable since all CUSUM values are located in the 5% significance interval (see Figure 1).

In the long term the EA's economic growth is correlated with its own past values and the lagged values of fiscal balance, government debt, government expenditure, minimum reserve requirements and ECB's interest rate. In the short run economic growth in the EMU is inversely related to the values of fiscal balance and government expenditure from the previous period.

Figure no. 1 CUSUM Test for dynamic stability of Equation (1)



Source: Prepared by the author

The Pairwise Granger Causality Tests indicate that in short period there is a causal link from the ECB's interest rate to the economic growth in the EA (see Table 4) and from the growth rate of real GDP to fiscal balance, government debt, government expenditure and the ECB interest rate (see Table 5).

Table no. 4 - Short-term causality from fiscal and monetary variables to GDPGR

Variable	Probability
FISC_BAL	0.29
GOV_DEBT	0.48
GOV_EXP	0.21
GOV_REV	0.69
INT_RATE	0.03
MRR	0.64

Source: Prepared by the author

Table no. 5 - Short-term causality from GDPGR to fiscal and monetary variables

Variable	Probability
FISC_BAL	0.00
GOV_DEBT	0.00
GOV_EXP	0.00
GOV_REV	0.43
INT_RATE	0.00
MRR	0.29

Source: Prepared by the author

The Granger Causality/Block Exogeneity Wald Tests show that in the long run there are no causal links from the fiscal and monetary variables to the real GDP growth rate (see Table 6), but economic growth causes fiscal balance and government expenditure (see Table 7).

Table no. 6:-Long-term causality from fiscal and monetary variables to D(GDPGR)

Variable	Probability
D(FISC_BAL)	0.3380
D(GOV_DEBT)	0.3581
D(GOV_EXP)	0.3238
D(GOV_REV)	0.7079
D(INT_RATE)	0.2420
D(MRR)	0.1145

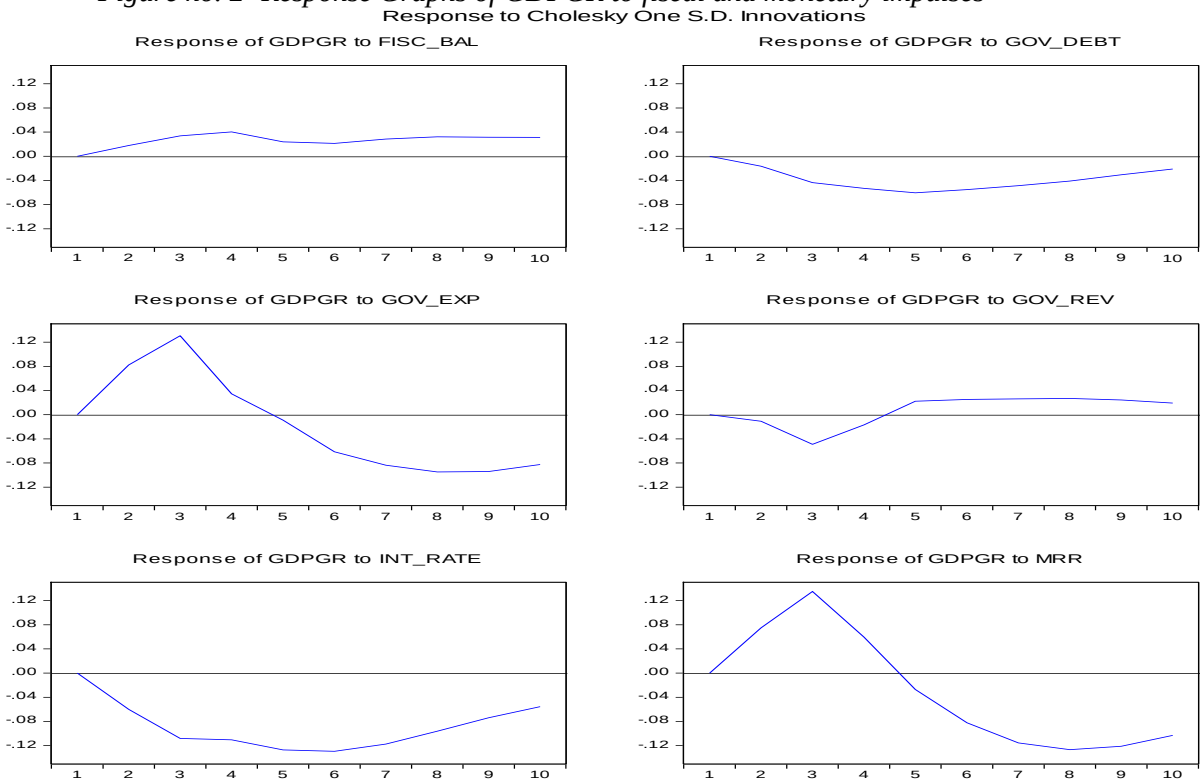
Source: Prepared by the author

Table no. 7: Long-term causality from D(GDPGR) to fiscal and monetary variables

Variable	Probability
D(FISC_BAL)	0.0258
D(GOV_DEBT)	0.6336
D(GOV_EXP)	0.0114
D(GOV_REV)	0.9499
D(INT_RATE)	0.1900
D(MRR)	0.7342

Source: Prepared by the author

Figure no. 2- Response Graphs of GDPGR to fiscal and monetary impulses



Source: Prepared by the author

The response of the EA economic growth to fiscal and monetary changes is shown on Figure 2.

2. Fiscal and monetary determinants of the EMU's business cycle

The fiscal and monetary determinants of the EA's business cycle have been identified by vector autoregression, in which participate the following variables: **GAP** – output gap; **FISC_BAL** – fiscal balance; **GOV_DEBT** – government debt; **GOV_EXP** – government expenditure; **GOV_REV** – government revenue; **INT_RATE –** interest rate on the main refinancing operations of the ECB; **MRR** – minimum reserve requirements. The target variable is **GAP**.

Table no. 8 - Group unit root test on the level values of variables

Method	Statistic	Prob.**	Cross sections	Obs.
Null: Unit root (assumes common unit root process)				
Levin, Lin & Chu t*	-0.61420	0.2695	7	433
Null: Unit root (assumes individual unit root process)				
Im, Pesaran and Shin W-stat	-0.19662	0.4221	7	433
ADF - Fisher Chi-square	16.9497	0.2589	7	433
PP - Fisher Chi-square	10.3654	0.7350	7	441

Source: Prepared by the author

Table no. 9 - Group unit root test on the first differences of variables

Method	Statistic	Prob.**	Cross sections	Obs.
Null: Unit root (assumes common unit root process)				
Levin, Lin & Chu t*	-11.6322	0.0000	6	367
Null: Unit root (assumes individual unit root process)				
Im, Pesaran and Shin W-stat	-11.6969	0.0000	6	367
ADF - Fisher Chi-square	128.393	0.0000	6	367
PP - Fisher Chi-square	171.696	0.0000	6	372

Source: Prepared by the author

The group unit root tests (see Tables 8 and 9) indicate that variables are integrated of order 1. The optimal lag-length for the Johansen co-integration test and for the VAR estimation is one lag (see Table 10). The Johansen co-integration test shows that variables are co-integrated and there are two co-integrating equations, therefore a restricted VAR (a Vector Error Correction) is applied.

Table no. 10 - VAR Lag Order Selection Criteria

Lag	Schwarz information criterion
0	12.04036
1	2.961724*
2	4.299850
3	5.862472
4	7.352484
5	6.498944

** indicates lag order selected by the criterion*

Source: Prepared by the author

The equation for the target variable **GAP** in the vector error correctionmodel after the removal of the statistically insignificant variables is

(2)D(GAP) = 0.10*(GAP(-1) - 0.99*GOV_DEBT(-1) + 0.89*GOV_EXP(-1) + 8.70*GOV_REV(-1) - 4.85*INT_RATE(-1) + 11.80*MRR(-1) - 368.35) + 0.50*D(GAP(-1)) - 0.45*D(FISC_BAL(-1)) - 0.56*D(GOV_EXP(-1)) + 0.02

The first term in Equation (2) is an error correction term, which shows a long-run relationship between the dependent variable and the independent variables. The regression coefficient before the first term is positive and shows the rate per period, at which a deviation from the long-term equilibrium will increase. The value of 0.10 of the first coefficient suggests that the deviations from the long-run equilibrium between **D(GAP), GAP(-1), GOV_DEBT(-**

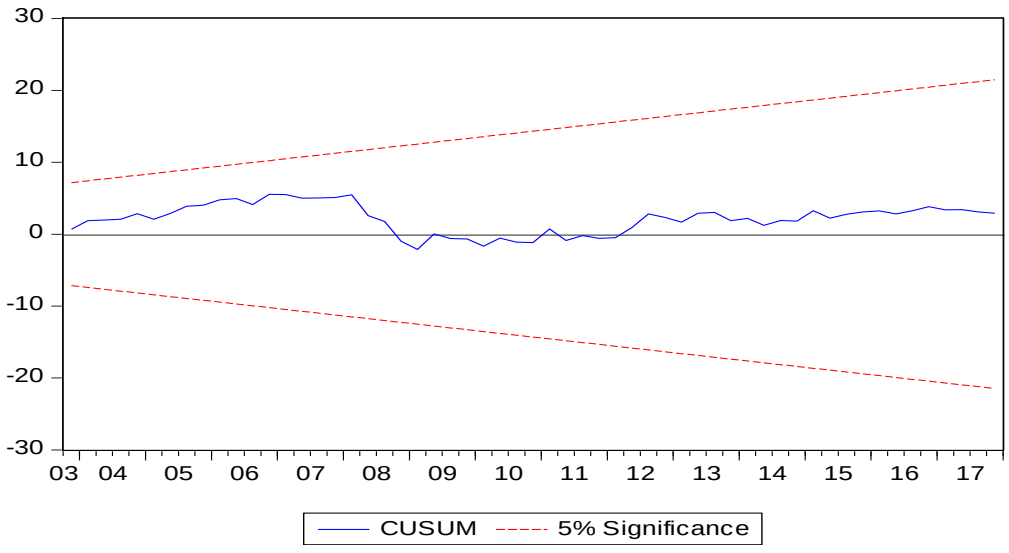
1), GOV_EXP(-1), GOV_REV(-1), INT_RATE(-1) and **MRR(-1)** will grow by10% per period.

The second, the third and the fourth terms are short-run. The value of the second regression coefficient (0.50) means that in the short term 1% change in **D(GAP(-1))** will lead to a 0.50% change in **D(GAP)** in the same direction, if all other variables are held constant. The value of the third regression coefficient (-0.45) means that in the short run 1% change in **D(FISC_BAL(-1))** will cause a 0.45% change in **D(GDPGR)** in the opposite direction, if all other variables remain unchanged. The value of the fourth regression coefficient (-0.56) means that in the short term 1% change in **D(GOV_EXP(-1))** will lead to a 0.56% change in **D(GAP)** in the opposite direction, if all other variables remain unchanged. The fifth coefficient is the constant, which has a value of 0.02.

The value of the coefficient of determination (0.55) shows that 55% of the changes in the EA output gap can be explained by changes in the explanatory variable participating in Equation (2). The probability of the F-statistic (0.00) indicates that the alternative hypothesis of the adequacy of the regression model is accepted. The acceptance of the alternative hypothesis does not mean that the model specification is the best possible but only that the regression model adequately reflects the relationship between dependent variable and independent variables.

The serial correlation LM test (Chi-square probability of 0.2017) confirmed the zero hypothesis of the absence of a serial correlation of residuals. The residual heteroscedasticity test (Chi-square probability of 0.0618) confirmed the null hypothesis of the absence of heteroscedasticity in Equation (1) at the 5% significance level. The requirement of normal residual distribution is observed in Equation (2). The probability of the Jarque-Bera statistic is 0.03, which gives reason to accept the zero hypothesis of a normal residual distribution at the 1% level. The CUSUM Test indicates that Equation (2) is dynamically stable since all CUSUM values are located in the 5% significance interval (see Figure 3).

Figure no. 3: CUSUM Test for dynamic stability of Equation (2)



Source: Prepared by the author

In the long term the EA's output gap is correlated with its own past values and the lagged values of government debt, government expenditure, government revenue, minimum reserve requirements and ECB's interest rate. In the short run the output gap in the EMU is

related positively to its own past values and negatively to the values of fiscal balance and government expenditure from the previous period.

The Pairwise Granger Causality Tests indicate that in short period there is a causal link from the ECB's interest rate to the output gap in the EA (see Table 11) and from the output gap to government debt and the ECB interest rate (see Table 12).

Table no. 11 - Short-term causality from fiscal and monetary variables to GAP

Variable	Probability
FISC_BAL	0.61
GOV_DEBT	0.43
GOV_EXP	0.71
GOV_REV	0.84
INT_RATE	0.06
MRR	0.99

Source: Prepared by the author

Table no. 12 - Short-term causality from GAP to fiscal and monetary variables

Variable	Probability
FISC_BAL	0.83
GOV_DEBT	0.04
GOV_EXP	0.53
GOV_REV	0.73
INT_RATE	0.05
MRR	0.64

Source: Prepared by the author

The Granger Causality/Block Exogeneity Wald Tests show that in the long run there are no causal links from the fiscal and monetary variables to the output gap (see Table 13), but the output gap causes the ECB interest rate (see Table 14).

Table no. 13 - Long-term causality from fiscal and monetary variables to D(GAP)

Variable	Probability
D(FISC_BAL)	0.3758
D(GOV_DEBT)	0.3407
D(GOV_EXP)	0.3088
D(GOV_REV)	0.7827
D(INT_RATE)	0.3953
D(MRR)	0.1319

Source: Prepared by the author

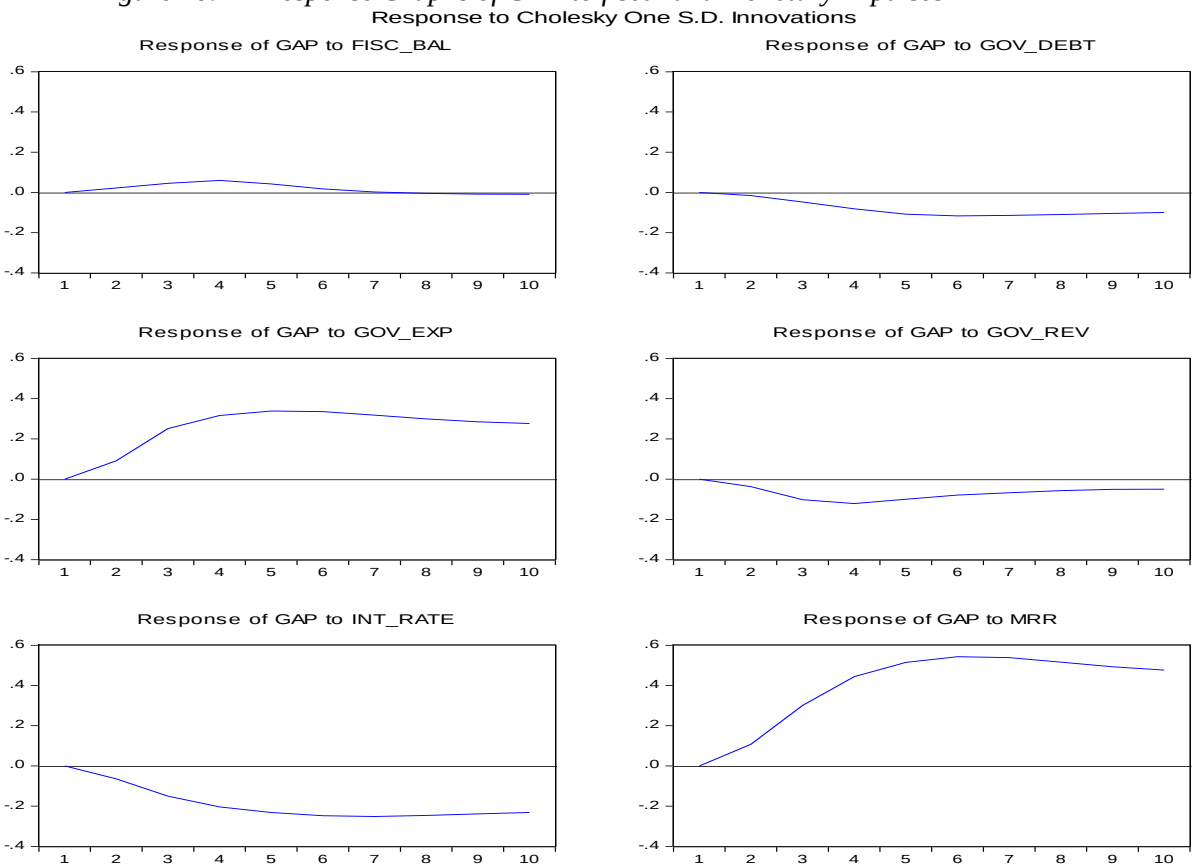
Table no. 14 - Long-term causality from D(GAP) to fiscal and monetary variables

Variable	Probability
D(FISC_BAL)	0.3254
D(GOV_DEBT)	0.6488
D(GOV_EXP)	0.1775
D(GOV_REV)	0.7614
D(INT_RATE)	0.0019
D(MRR)	0.3499

Source: Prepared by the author

The response of the EA output gap to fiscal and monetary changes is shown on Figure 4.

Figure no. 4 - Response Graphs of GAP to fiscal and monetary impulses



Source: Prepared by the author

Conclusion and Recommendations

There are four long-term relationships between economic growth, fiscal and monetary policy in the EMU. Two of these links are equilibria (the first and the third term of Equation (1)) and two are disequilibria (the second and the fourth term of Equation (1)). In the long-run fiscal and monetary policy do not cause the growth rate of real GDP (see Table 6), but economic growth causes fiscal variables (see Table 7).

In the short term the real GDP growth rate in the EA can be increased by lowering the share of government expenditure in GDP (see the sixth regression coefficient in Equation (1)). There are short-run causalities from monetary policy to economic growth (see Table 4) and from economic growth to fiscal and monetary parameters (see Table 5).

A long-term disequilibrium relationship exists between output gap, fiscal and monetary policy in the EMU (see the first term of Equation (2)). In the long-run fiscal and monetary policy do not cause the GDP gap (see Table 13), but the output gap causes interest rates (see Table 14).

In the short term the cyclical fluctuations in the EA can be counteracted by changing the share of government expenditure in GDP (see the fourth regression coefficient in Equation (2)). The negative value of this coefficient suggests that decreasing the share of government expenditure in GDP may help avoid a recession, and increasing this share may prevent an overheating of the economy. There are short-run causalities from monetary policy to the business cycle (see Table 11) and from the business cycle to government debt and the ECB interest rate (see Table 12).

The empirical results in this study confirm the expectations of economic theory that in the long run fiscal and monetary policies are neutral (do not cause economic growth and

cyclical fluctuation). In the short term fiscal consolidation (reducing the share of government expenditure in GDP) may be used to stimulate growth and overcome a recessionary gap.

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LEGAL FRAMEWORK FOR DEVELOPMENT OF SMALL AND MEDIUM ENTERPRISES IN BULGARIA

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Abstract

Changes in the world economy are a result of wider expansion of competition between companies based in different countries, including Bulgaria. This requires all parties, as well as individual enterprises, to adopt new strategies that allow them to develop competitive advantages through knowledge of innovation and the essence of small and medium - sized enterprises. In recent years, it has solidified the understanding that small and medium - sized enterprises are more flexible and adaptable than large organizations. Small and medium -sized enterprises have a new idea of a product, service or process, smaller costs and are faster than big business. Small companies usually strive with all the forces and means to enter the market and conquer a certain position. Sometimes large firms do not absorb inventions developed in their own scientific divisions because of the risk of getting an insufficiently high profit margin to cover the costs. In order to be more easily managed small businesses, managers should be familiar with the nature of the organization, its goals and motives, the market, as well as the legislation allowing all this to be in accordance with the law of Bulgaria. The formation of an appropriate economic and legislative environment for the effective functioning of small and medium - sized enterprises is a difficult and lengthy process for each country. Small and medium - sized enterprises are a key prerequisite for the existence of competition and working markets, and therefore for the overall economic development of a country. Not surprisingly the EU's business support policies focus precisely on supporting small and medium - sized enterprises – in this segment is the most turbulent entrepreneurial activity, there are creating the most new jobs and often they are a source of successful innovation. The main objective of this article is to clarify the nature and peculiarities of small and medium - sized enterprises, as well as the impact of Bulgaria's legislation on small businesses. The main research methods used in the development are content analysis, method of analysis and synthesis, intuitive and systematic approach.

Keywords: *small and medium - sized enterprises (SME's), competition, innovation, economy, legislation, regulatory frameworks*

JEL Codes: *H00, H19, H50, K00, M00*

Introduction

The semantic and logical notion of "enterprise" is deduced from the personality of the entrepreneur, who undertakes an initiative, invests capital, organizes the production unit (the enterprise) and assumes the entrepreneurial risk. In this case, it does not matter which sector of the holding (production, services or elsewhere) the entrepreneurial initiative is targeted. This suggests that as companies can be seen factories, factories, combinations, conglomerates and hotels, restaurants, cinemas, cafes, etc. Therefore, the criterion of entrepreneurship, resp. and to the enterprise is not the type of production and the industry, but the existence of a speculative element and the monetary value expression of the exchange. It is these two elements that are the most typical and specific signs of the enterprise. As an economic organism, the enterprise

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is an evolutionary product of economic differentiation in the production-consumption system. In particular, the modern enterprise is the result of the historical process of separating the individual producer from its predecessor - the individual-consumer.

"For the public to exist, it must obtain and use a certain amount of goods. At first in the way of collecting, man satisfied his immediate elementary, mainly physiological needs. This process was too slow and lengthy. However, at a certain point in time, when the producer goes on the market with a surplus of manufactured products, the public production starts. Since then, production has been an intermediate unit, a process mediated by the exchange between man and nature. The production is not a one-time, sporadic act, but a continuous, dynamic process that can no longer be stopped and will continue in the future to the existence of civilization" (Skolev, 2010). Each production is carried out in a certain place. In the center of this place is the man with his means of work and the extracted from the nature substances, materials and forces. Very accurately and correctly Henry Ford says that nature has given man hands, feet and mind to manifest through them the blissful power of labor that transforms "states" to receive "values" (Ford, 1922). However, the productive forces in question have mainly two aspects:

- Firstly, some of them can be regarded as production conditions (terrain, buildings, labor, etc.);

- Secondly, the other elements represent the means of work. Such differentiation not only is not meaningless, but it is absolutely necessary, since the elements of each group give a corresponding impact on production and management in the enterprise.

To transform "statuses" most effectively into values, productive forces, resp. The factors of production must be primarily mobilized, matched, balanced and used in the most rational way for the specific conditions. The rational combination of production factors in space and time represents their organization, that is, the necessary complex of actions for the formation of a certain structure or system. However, each individual community covering a particular territory, technical equipment, office furniture, personnel, environment, etc., which is tasked with satisfying certain human rights, is already a distinct organization, i.e. a corporate system with a certain structure and objectives. In this case, the interest is precisely this aspect of the organization.

1. Characteristics of small and medium - sized enterprises (SME's)

The first more systematic studies and ideas pertaining to the enterprise, called then "private-economic" studies, date back to the epoch of the Renaissance and are mainly related to the development of Italian trade. They continued to dominate until the middle of the 18th c., when the concepts fell "under the influence of the cameralistic exercise for the management of the state and lordly organizations" (Dobrev, 1936, p. 17). "Micro, small and medium - sized enterprises are the engine of the European economy. They are a major source of jobs, create entrepreneurial spirit and innovation in the EU and are therefore vital to promoting competition and employment. The new definition of small and medium - sized enterprises, which entered into force on 1 January 2005, represents an important step towards a better business environment for them and is aimed at promoting entrepreneurship, investment and growth. This definition was made after extensive stakeholder consultations, proving that the hearing of small and medium-sized enterprises is the key to the successful implementation of the Lisbon Strategy goals" (EU, 2007, p.2).

The evolutionary development of the enterprise has historically been accompanied by the deepening of the differentiation in the forms and its gradual separation as a separate type of production unit. In addition, the main signs, principles of organization, objectives and functions performed have changed. Suffice it to say that, unlike the primary forms (the

household), where the aim is to meet more needs with the least possible resources, the main objective of the modern enterprise is reduced to making the maximum profit by Spending at least cost. In addition, in honors from the household, the main functions of today's enterprises are aimed at the creation and realization of exchange values (goods and services) to satisfy consumer and production needs outside the business unit, thereby putting individuals and businesses in a mutually reinforcing market. The designation of an enterprise as small or medium is carried out with the help of different indicators – which can be summarized in two large groups – quantitative and qualitative. Quantitative indicators give a better basis for comparisons and analysis, allowing the data to be provided in the different regions of the country, as well as for different time periods with a view to tracking changes in dynamics. The perception of an economic unit as an SME is directly linked to its independence.

The more significant signs that characterize the essence of the modern enterprise are the following (Scolev, 2010):

- Business organization;
- Financial - economic and managerial autonomy guaranteeing its economic freedom;
- Market links;
- Use of own and foreign means as capital of the enterprise;
- The existence of an entrepreneurial (business) risk;
- Striving for survival and profits, etc.

The foregoing shows that the notions of 'economic organization' and 'undertaking' should be distinguished, although it is too subtle. The difficulties in distinguishing between the two categories are due to links i.e. between them, dictated by the fact that they express the same object in different ways and from different sides of it. However, the term 'economic organization' is broader and general. It expresses in an indeterminate sense the totality of the tangible, intangible and human agents of any manufacturing and technical complex, regardless of its composition, structure or scale, in any sector of the national economy (agriculture, Industry, services, etc.) without identifying the specific initiative. Therefore, each business unit that is organized and manufactured is represented by its internal functional nature, technical - technological and resource - friendly assurance is a business organization.

Where the totality of the organized agents engages in the realization of a specific economic initiative (production), the economic organization acquires external formal identity and identification in the national holding, in the form of undertaking. In those circumstances, an industrial plant, a construction company, an insurance undertaking, an agro - enterprise, etc. can now be talked about. It is clear from the reasoning thus made that the undertaking is a narrower concept than the business organization, but the latter is a prerequisite. Ultimately, an enterprise can be defined as an external manifestation of the formal and legal separation of the business organization within the national economy.

The creation of small and medium - sized enterprises has long been one of the main milestones in the operation of the market economy in developed countries. The main reasons for government support are: from one part, their non - competitiveness in sourcing funding; the high administrative costs of complying with government requirements, including tax legislation; difficulties in gathering information about novelties; on the other hand, the reason that companies are much more flexible and dynamic than large firms and therefore support the overall growth of the economy (CED, 2001, p. 12).

The composition of the commercial enterprise includes rights in ram or contractual real rights/of use, of construction, servitudes (on movable or immovable property). This chamber also enters the possession, although it is not a subjective right in rem. The company also includes the real weights – a pledge and a mortgage. Another essential element of the enterprise is the obligation rights/receivables and payables/ and debts. They arise from contracts (sales,

vehicles, commissions, insurance, etc.), from unilateral transactions (check, promissory note/or non-contractual grounds/unjust enrichment). The company also includes personal collateral – warranty and guarantee, as well as the repayment deadlines. The composition of the commercial enterprise includes more rights and obligations from civil transactions (e.g. rental contract); administrative and financial obligations (fines, taxes, fees, insurance, etc.); rights and obligations under employment contracts.

The company may also include rights and obligations related to the objects of the so - called intellectual property (artistic and industrial) - works of science, art, literature, brands, utility models, inventions, industrial etc.

A specific place in the composition of the commercial enterprise occupies the right of a company. The company's composition includes not only ordinary rights but also legal expectations (e.g. rights under deferred conditions) and natural (degenerate) rights – those who have lost the possibility of state protection. The commercial establishment must not be equated with the commercial property, which is a set of rights and obligations of a direct value nature. The enterprise has a broader concept and includes the property.

Factual relations are defined as the most delicate and most valuable element of the commercial enterprise. They consist of specific internal organization of production and management, market position, clientele, trust in buyers, led accounting, etc. therefore, the factual relationship is not a legal relationship or a right. They have no economic and legal value outside the enterprise, but as part of it is an important pricing factor in transactions with a commercial enterprise. Fundamental attention from the factual relationship is paid to the clientele. It is not an element of the actual relationship of the trader, but it has a bearing on the commercial enterprise with a view to its formation and existence. The main activity is the conclusion of transactions and thus creates both rights and obligations and factual relations.

The elements of the composition of the commercial enterprise can be distinguished by property and non - material. Property elements have content that is directly valued in money and non-property elements do not have such content (e.g. the right to a company and a brand). Another division of the elements from the commercial enterprise is on stand-alone elements that can be transferred separately from the enterprise (e.g. proprietary rights) and non - standalone elements that can only be transferred together with the entity (e.g. law of a company). It is irrelevant that the classification of elements of the composition of the commercial establishment is essential and immaterial, since the same elements may have different meanings for individual undertakings. The commercial enterprise is a dynamic complex. The relationship between rights, obligations and factual relationships changes with regard to the change of trading activity.

2. Analysis of the legal framework for small and medium - sized enterprises

The legal framework for the development of small and medium - sized enterprises in Bulgaria is characterized by numerous laws and regulations regulating various aspects of their activities, as well as different spheres of economic activity in the country (CFD, 2001, p.16). The overall regulatory framework relevant to the small and medium - sized enterprises sector is characterized by inconsistencies, instability, sluggishness and complexity. The procedures in it are lengthy and complex, high tax fees, including large administration, etc. thanks to Bulgaria's entry into the European Union in 2007 a few years later stimulated small and medium - sized enterprises with different projects and financing for business, but it is not possible to remove some of the obstacles for SME's. The main difficulty of SME's is the relative high cost of complying with tax laws and other forms of government regulation, especially if they are involved in an international market. Nevertheless, the legislation is a necessary part to protect business and its environment, the state of health and the working

conditions of employees, to determine the necessary social security norms, to determine the minimum wages and working hours, etc. The legislation aims to create the conditions for building a favorable and stable institutional and economic environment for the creation and development of competitive small and medium - sized enterprises. Small and medium - sized enterprises are: micro, small enterprises and medium - sized enterprises.

- Micro - enterprises are small enterprises with an average list of staff of less than 10 people.

- Small enterprises are enterprises that: have an average number of staff of less than 50 people, and annual turnover up to 5 000000 BGN or the value of their fixed material activations up to 1 000000 BGN.

- Medium - sized enterprises are enterprises that: have an average number of staff of less than 250 people and have an annual turnover of up to 15 000000 BGN or the value of their fixed material activations up to 8 000000 BGN.

The organizations are described in detail and discussed in different legal regulations in the Commercial Law of Bulgaria. For example, pursuant to article 15 (1) of the commercial law of the Republic of Bulgaria, an entity as a set of rights, obligations and factual relationships may be transferred through a transaction (CL, 2010). With this definition, our legislature has adopted the so-called object theory. As a whole, the enterprise is a single object of ownership that belongs to the legal entity - the trader. There are many theories about the commercial enterprise:

- According to personification theory, the commercial enterprise is a separate (self - governed entity of law);

- The patrimony theory examines the commercial enterprise as a dependent target property – patrimonies;

- Anatomical theory - the commercial enterprise is a factual population, etc.

The commercial enterprise is an organizational and dynamic complex (assembly), not a mechanical sum of elements. For this reason, the value of the predevelopment generally, as a rule, significantly exceeds the sum of the values of the various elements. The right of ownership of the entity differs from the right of ownership over individual elements, which may belong to both the trader and another person. It is therefore a new right to property which is defined as a higher-ranking right/right of an organised property.

Depending on the functions and the objective pursued - whether it is profit or not - organisations are allocated to business (business) organizations and non-profit organizations. In this specification it is good to define the business organisation with the most common first definition as:

- Community, an organism where continuous movement is carried out, in which the resources ("states"), combined with the machines under the influence of labor, are transformed into values (products and services) satisfying the manifested human needs.

The business organization may be of a simplified form or a complex conglomerate. It depends on its content, its legal form and its organizational and technical structure. To put it another way, the business organization can be represented only by one plant, one factory, and even by a separate workshop (e.g. dry cleaning); on the other hand, it may cover a number of functionally differentiated units, divisions, branches, etc., which themselves may also constitute economic organizations. Business organizations can be public and private according to what ownership they are. Although the two types of organizations do not differ in the objects of the productive activity in a given sector and in the relationship of economic exchange, their status quo and role in the national economy differ significantly. The main differences are manifested except in terms of ownership, even in the organization, funding, some of the objectives, etc. Ultimately, the business organization can be more fully defined as:

- Production-economic complex (community), expressing the internal functional nature and content of the production unit through the rational combination (organization) of tangible, intangible assets, human resources and other elements of production and realization of goods and services.

However, this definition does not yet specify and does not represent, externally (within the national economy), the main production unit, but merely reflects its organization and feasibility to fulfill its functions. While the term 'economic organization' expresses only the internal functional nature and content of the main production unit, its formal manifestation and its legal identity in the aggregate national holding is expressed by enterprise. It appears to be the main cell in the national economic organism and subject to the current scientific direction, which requires a more precise clarification of its essence.

In theory and practice, different opinions are maintained on the number of commercial enterprises that a trader may own. According to one opinion, the trader can only have one enterprise. Another opinion is also supported, according to which the trader may have several undertakings. Support deserves the first opinion - the trader can carry out his business under one trade name (company). The commercial enterprise does not have a separate legal registration, only the entities of the commercial law – the traders.

Registration of the trader shall be deemed to be entered and the commercial enterprise. For this reason, the company simultaneously individualizes the trader in turnover and is an element of the commercial enterprise, i.e. it matters to both the legal entity and the legal entity. The company can be transferred only with the commercial enterprise, as it is mentioned in article 60, (1) in CL of Bulgaria.

Understanding that a trader can have several enterprises, proceeds from non-legal criteria - business and organizational autonomy of the various activities of the trader (e.g. workshop for soft drinks, factory for production, etc.). These activities can be carried out in different settlements, justifying the theory of separate commercial enterprises. The commercial enterprise is a legal category and is inextricably linked with the trader and its registration in the commercial register. The traders can only economically/not legal/owning several enterprises. This is the case where the trader registers several LTD. In this case, the economic owner is one, but the legal entities and objects multiply.

In art. 15, (1), the CL of Bulgaria, expressly provides for the possibility of transferring the commercial establishment. It follows that consideration is given to transactions in a contractual-property action: a contract for sale, a replacement, a donation, an acquisition in a commercial company, a will, a covenant, a partition, a donation or a partition - a will. In the argument of a stronger basis, transactions with a commercial enterprise which do not have a transfer effect are also permissible: a rental contract, a lease, a use. The transactions to be transferred are commercial, irrespective of their pecuniary or royalty - free nature. A trade is a transaction concluded by a trader which is linked to the occupation he pursues. It can be assumed that, when transferring a commercial undertaking, the transferor concludes the latter and the successor to his first commercial transaction. With the change of legal framework, the legislature has, at last, expressly designated the competent authority of the commercial company, which may adopt a decision to transfer the commercial undertaking, as well as the necessary majority and form of the decision. Article 15, (2) CL refers to art. 262, which designates the body (s), the majority and the format for deciding to convert the CL. To transfer the company to the partnership, the consent of all partners is required, given in writing with notary's certification of signatures, etc.

Article 15, (2) CL is an imperative rule. If the company contract or the statutes of commercial organization provide for another order, majority or form of acceptance of the decision to transfer the undertaking, the relevant clauses will be null and void. For the

application of article 15, (2) CL is irrelevant the type of the transfer transaction (sale, exchange, donation, acquisition in a commercial company, etc.) art. 15, (2) CL does not apply to non - transferable transactions (non-appropriable, non - translation, only with bond action). These transactions may be concluded in the order laid down in the constituent instrument of the company concerned. When transferring the enterprise in article 15, (3), the liability of the expropriator is regulated for the liabilities in the transfer of the company. The expropriator is responsible for the debts jointly with the successor. With the changes in the legislation, this responsibility is "limited to the extent of the rights obtained".

The transfer of the undertaking should be entered in the commercial register. The registration rules have undergone several successive, substantive changes. In view of the most recent changes in the commercial legislation (in force since 01.10.1006) the transfer of the enterprise should be registered simultaneously in the case of the expropriator and the successor. This eliminates the requirement to observe a certain order when entering the transfer of the enterprise in cases where the seats of the transferor and the transferee are in the different courts. According to article 16a, (1), the successor to the transferee shall administer an undertaking separately for a period of 6 months. This period shall run from the date of entry of the transfer into the commercial register.

Art. 16a, (2) CL narrow the circle of creditors, which can benefit from the advantages of separate management. These are only creditors whose claims are not secured. Lenders with secured receivables have no protection under article 16a CL. No matter is the type of collateral - real or personal. The second limitation of the circle of creditors to which the separate management is applied is provided for in the event of their claims being incurred. According to article 16a, (2) CL these are only those creditors of the expropriator and the transferee whose claims arose before the date of the respective entry of the transfer. According to article 16a, (3) CL the members of the managing body of the transferee shall be jointly and severally liable to the creditors for the separate management. This responsibility is a tort.

Conclusion

Small business is that essential part and a kind of complex mechanism of the economy, which in an individual way it is possible to have a deficit in a wide range of social life areas. Despite the difficulties caused by the regulatory framework, small and medium-sized enterprises are able to exist. The commercial law must be renewed and changed to help to a greater extent the business, defend its positions and give more leeway.

Based on what has been said here, the following conclusions can be drawn for SME's and the legal framework in the country:

- Small and medium - sized enterprises are the largest source of new jobs and economic growth. To promote their development, it is of particular importance to improve the regulatory environment and to remove bureaucratic obstacles for entrepreneurship. Compared to large enterprises, small and medium business is much more affected by excessive regulation because it suffers much higher administrative costs calculated according to the number of employees.

- In this respect, the initiative to reduce the administrative burden of small and medium - sized enterprises was launched in 2006 and a specific action program was presented in January, which clearly identifies the problematic areas and presents specific proposals. The aim is to reduce the administrative burden by 25% by 2012. According to forecasts, this would lead to a 1.5% growth of EU GDP, amounting to 150 million. The Commission's efforts in this regard consist in reducing and simplifying existing legislation relevant to small and medium - sized enterprises, e.g. easing accounting rules, reducing the cost of international payments and simplifying customs procedures.

- Despite the steps to build a more effective institutional framework to support SME's, there are still problems arising from the lack of sufficiently effective program, insufficient business awareness of the functions, objectives and the tasks of State institutions in this field, as well as the existence of significant bureaucracy. The easing of regulatory regimes, the improvement of competition law and public procurement procedures, insolvency regulation, the resolution of commercial disputes, and the neutralization of corrupt practices have a positive impact on the business climate and environment in which SME's are directly working. Nevertheless, in this area, it is necessary to continue the measures, especially in the areas of regulatory regimes and administrative procedures, in order to accelerate, simplify and ensure greater transparency.

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KIDNAPPING AND UNLAWFUL IMPRISONMENT IN RELATION TO ONE ANOTHER AND OTHER OFFENSES

STRAHIL GOSHEV [1]

ОТВЛИЧАНЕ И ПРОТИВОЗАКОННО ЛИШАВАНЕ ОТ СВОБОДА В СЪОТНОШЕНИЕ ПОМЕЖДУ СИ И С ДРУГИ ПРЕСТЪПЛЕНИЯ

СТРАХИЛ ГОШЕВ

Abstract

This Article is directed to Section IV of Chapter II of the Penal Code, entitled "Abduction and Unlawful Imprisonment", and in particular to the provisions of Art. 142 and Art. 142a of the Penal Code.

It presents in detail and chronologically the drafting and subsequent modifications of the specific texts of the Penal Code related to the illegal deprivation of liberty, with a view to the development of public relations, legislative and political changes over the years and their current model today.

A detailed analysis of the structure and composition of the two legal norms, a careful examination of subjective and objective features, shows clearly and categorically that they are two rather similar, but at the same time different, crimes against the individual. These are often implemented in the basis of more complex criminal constructs with additional subjective features representing different specific purposes.

Precisely distinguishing between different hypotheses in abduction and unlawful imprisonment is a prerequisite for the precise and correct application of each of the two texts.

Keywords: *imprisonment, crime, unlawful, legal, kidnapping*

JEL Codes: *K14*

В раздел IV от Глава II на НК, озаглавен „Отвличане и противозаконно лишаване от свобода" са уредени последователно в разпоредбите на чл. 142 и чл. 142а от НК две от сравнително широко разпространените престъпления против личността. За всяко от тях има предвиден и квалифициран състав, когато е извършено от субект, който действа по поръчение или в изпълнение на решение на организация или група по чл. 321а, или организирана престъпна група.

Регламентацията на престъплението по чл. 142 от НК е опит, чрез законодателни промени да се отговори на всяко дръзко посегателство срещу личната свобода и правото на свободно придвижване на гражданите.

В исторически план за пръв път съставът на престъплението чрез употреба на глагола „отвлече" е въведен със ЗИД на НК, обн. ДВ, бр. 50/1995 г. Преди това в актуалната до онзи момент редакция на закона (Редакция на НК към ДВ, бр. 1 от 04.01.1991 г.), същият раздел е бил озаглавен „Противозаконно лишаване от свобода" и е уреждал само това престъпление, но в разпоредбата на чл. 142 НК. С посоченото изменение и допълнение на НК (чл. 142 от НК - Нов - ДВ, бр. 50 от 1995 г.; изм., бр. 27 от 2009 г.; изм. и доп., бр. 26 от 2010 г.; доп., бр. 16 от 2019 г.) (Изм. и доп. - ДВ, бр. 92 от 2002 г.; изм., бр. 27 от 2009 г.; изм. изцяло, бр. 26 от 2010 г.) този съществуващ състав

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е бил преместен в чл. 142а от НК, а на негово място с различни промени през годините до днес е дадена регламентация на отвличането.

Този чисто социално-културен, исторически период на трансформация на българското общество от тоталитарно в демократично такова, само няколко години след радикалните политически промени и началото на прехода, се явява благоприятен за криминалния контингент и в частност за престъпните сдружения. В преследване на своите незаконни цели престъпниците въвеждат в предметния обхват на своята криминална дейност множество деяния с висока обществена опасност, насочени срещу личната физическа и волева свобода и правото на свободно придвижване на гражданите. Именно тези престъпни прояви, които често обслужват и друга по характер, основна престъпна дейност, като трафик на хора, изнудване, предоставяне за развратни действия и т.н., мотивират законодателя да въведе престъплението по чл. 142 от НК като отделен и самостоятелен престъпен състав. Този текст, заедно с въведената преди него норма на престъплението противозаконно лишаване от свобода (ДВ, бр. 1 от 04.01.1991 г.) целят, трайно да запретят под страх от наказание, както се аргументира в теорията (Стойнов, Ал., 2006, стр. 152-153), всяка форма на нарушение на обществените отношения, гарантиращи конституционните права на гражданите, свързани със свободната им воля, личната физическа свобода и свободното им придвижване в пространството.

Посоченият от законодателя в началото механизъм за реализиране на деянието по чл. 142 от НК, описващ действията по отвличане, обосновано еволюира през годините след неговото въвеждане. Елементите на състава на престъплението се променят динамично, като това води и до фиксирането на различен темпорален момент, в който изпълнителното деяние, бива довършено. В тази връзка, честите законодателни промени в началото налагат необходимост за усложнена преценка от страна на правоприлагащите органи, относно признаците на престъплението. На същите се налага винаги едно хронологическо проследяване по реда на чл. 2, ал. 1 от НК, относно това кой точно е бил законът по време на извършване на деянието, което често фактически е с продължителност от дни, седмици или дори месеци.

В първоначалната редакция на основния състав по чл. 142, ал.1 НК – „Който отвлече лице и противозаконно го лиши от свобода...“ е налице текст предвиждащ едно сложно двуактно престъпление, което е и продължено по смисъла на т. 1 от ТР №3/71 г., ОСНК. Двата самостоятелни и последователно описани в текста акта, формиращи престъпното деяние, са били подредени във функционална и времева /хронологическа/ зависимост един от друг. Докато първото действие, описано с глагола „отвлече“, представлява фактическа, насилствена промяна на местоположението на пострадалото лице, извършена изцяло против волята му, то последващите го действия и бездействия по противозаконно лишаване от свобода на практика елиминират за продължителен период от време правото на жертвата свободно да се движи в пространството до бъдещо окончателно преустановяване на това състояние. В тази връзка и според теорията (Стойнов, Ал., 1997), отвличането е било окончателно довършено именно с отпадане на ограничението за свободно придвижване на отвлеченото лице, като до този момент престъплението е било последователно и продължено осъществявано с предхождащото извършване на посочените два акта, реализирани чрез действия и бездействия. В същото време посоченият, отменен по-късно текст, който съдържа в себе си и изпълнителното деяние по чл. 142а, ал. 1 от НК, се е явявал специален и е поглъщал винаги противозаконното лишаване от свобода. По-широката му формулировка относно изпълнителното деяние е съдържала, освен фактическото противозаконно лишаване от свобода, още и първоначалния акт по отвличане на пострадалия, който изцяло липсва в текста на нововъведения чл. 142а, ал. 1 НК. По този начин е било фактически

невъзможно да се реализира самостоятелно и да се носи наказателна отговорност само за това погълнато престъпление.

Едва по-късно (Закон за изменение и допълнение на НК, обн. ДВ, бр. 92/2002 г.), законодателят преосмисля виждането си и „олекотява“ състава по чл. 142, ал. 1 от НК, като премахва втория от двата функционално свързани акта, с което окончателно отпада и двуактността на престъплението. Този вариант е запазен и до момента, като съдържанието на изпълнителното деяние посочва само действията по фактическа, насилствена промяна на местоположението на пострадалото лице. Поради това и теорията, и съдебната практика към настоящия момент приемат, че същото е винаги окончателно довършено с принудителното осъществяване на посочените действия от обективна страна (Р 207-96-ВК; Р 401-01-III н.о.; Р 336-2011- I н.о.; Р от 15.07.2010 г. по ВНОХД – Апелативен съд – Варна) (Михайлов, Д., 2003, стр. 19).

Заедно с тези положителни законодателни изменения, за съжаление се въвежда за продължителен период от време (до приемане на ЗИД на НК обн. с ДВ, бр. 26 от 06.04.2010 г.), неправилно и напълно излишно и допълнителна субективна предпоставка за съставомерност на деянието. Тя се изразява в това: отвличането да е задължително извършено със специалната цел пострадалият да бъде противозаконно лишен от свобода. Този допълнителен признак е създавал единствено усложнения при доказването и квалифицирането на престъпленията. Същият е бил и предпоставка за сериозни грешки в правосъдната дейност, поради което и логично, макар и доста късно е отпаднал (Закон за изменение и допълнение на НК, обн. ДВ, бр. 26/2010 г.). В актуалния текст на отвличането и съобразно общите правила на НК, за да е съставомерно едно деяние по чл. 142, ал.1 от НК, не е необходимо наличието на специална цел за противозаконно лишаване от свобода, а единствено инкриминираното деяние да е извършено от наказателноотговорно лице с пряк умисъл.

От изключително значение, за правилното дефиниране на спецификите на анализираното престъпление, е то да бъде отграничено от останалите криминални деяния в особената част на НК, които съдържат в текста на нормата си идентично описание на акта „отвлече“ или директно посочват механизма за осъществяване на деянието – „чрез отвличане“. Такива са престъпленията против личността по чл. 156 от НК – „отвличане с цел предоставяне за развратни действия“ и чл. 159а, ал. 2, т. 3, пр. 1 от НК – „вътрешен трафик на хора“, респективно, препращащият към него чл. 159б, ал. 2 от НК – „трансграничен трафик на хора“, извършен чрез отвличане. Наред с това идентично изпълнително деяние е уредено още и при престъпленията от Раздел I и II на Глава IV от НК – „принудителното встъпване в брак“ по чл. 177, ал. 2 от НК и „заживяването съпружески“ по чл. 190, ал. 2 от НК.

Конкретно отвличането с цел предоставяне за развратни действия по чл. 156 от НК е регламентирано в Раздел VIII на Глава Втора от НК и представлява деяние, насочено срещу половата неприкосновеност на личността, т.е. засяга в едната си част различни обществени отношения. Съставът на същото е специален по отношение на престъплението по чл. 142 НК, тъй като в нормата, която го регламентира, наред с общото за двете престъпления описание на изпълнителното деяние, чрез глагола „отвлече“ е предвидена допълнително и специална цел, а именно похитеното лице да бъде предоставено за развратни действия. Установяването на този допълнителен субективен признак води до наличие на съотношението специален-общ между двата престъпни състава и криминализиране на деянието по реда на специалния чл. 156 от НК.

Абсолютно идентично е процедирал законодателят и в посочените по-горе престъпления по чл. 177, ал. 2 и чл. 190, ал. 2 от НК. Разликата е единствено във вида на предвидените специални цели за всяко от тях. При първото, отвличането се осъществява

с цел пострадалото лице да бъде принудено да встъпи в брак, а при второто да заживее съпружески с някого. И двата състава, като специални, поглъщат отвличането реализирано в преследване на някоя от посочените специални субективни цели.

Другите две престъпления против личността посочени по-горе, по чл. 159а, ал. 2, т. 3, предл. 1 и чл. 159б, ал. 2 от НК също са поглъщащи спрямо престъплението по чл. 142 от НК, тъй като директно при първия текст или чрез опосредено препращане, както е в чл. 159б, ал. 2 от НК, съдържат в текста си цялостно позоваване на престъплението отвличане, като начин за реализиране на специалната и по-сложна престъпна дейност, регламентирана при престъплението трафик на хора (Пушкарова, Ив., 2012, стр. 119-124). Същите винаги са насочени от субективна страна към реализиране и на една или повече от предвидените в чл. 159а, ал. 1 НК експлоатационни цели. Именно тези престъпления най-често обосновават извършването на отвличания по поръчение или в изпълнение на решение на престъпни сдружения ангажирани с трафик на хора (Krasteva, N. & V. Krastev, 2017, pp 57-65).

Както бе отбелязано по-старото от двете престъпления в Раздел IV от Глава Втора на НК, с цитирания ЗИД на НК, обн. ДВ, бр.50/1995 г., е противозаконното лишаване от свобода и същото е било преместено, при по-късното въвеждане на отвличането, в новата разпоредба на чл. 142а от НК. Въпреки тази трансформация, оригиналният текст е запазил формулировката си и до днес, като в годините промени са настъпили единствено по отношение размера на наказанието и по-късно относно изменението и създаването на някои квалифицирани състави. Доколкото основният състав в същината си не е променян от създаването му е бил обект на множество анализи от страна на теорията (Стойнов, Ал., 1997, стр. 143-145; Гиргинов, Ант., 2002, стр. 104-107; Лютов, К., 1987, стр. 73-76) и съдебната практика (Р 443-2010-I н.о.; Р 306-2011-I н.о; относно спецификите на продълженото престъпление виж ТР №3/71 г., ОСНК, VII, т.1.), то липсва необходимост от по-детайлното му изследване в настоящата статия. Важно е единствено да се отбележи, че основен елемент за реализиране на изпълнителното деяние е противоправното бездействие на дееца, което може да е или да не бъде предхождано от негови активни действия. Именно това продължено бездействие формира и периода на обективно лишаване на пострадалото лице от правото му на свободно придвижване. В тази връзка следва да се разграничи ясно приложението на съставите по чл. 142а, ал. 1 НК и на чл. 142а, ал. 5, пр. 2 от НК, при които е използван количествен критерий относно продължителността на лишаването от свобода във времето. Основният състав, с оглед на нормативната формулировка и съпоставянето между двата, бива приложим единствено когато посочената свобода на придвижване на жертвата е била ограничена за времеви период по-кратък или равен на две денонощия. В случай че инкриминираният период е по-дълъг, деянието следва да се квалифицира, като престъпление по квалифицирания състав на чл. 142а, ал. 5, пр. 2 НК.

Подобно на отвличането, и престъплението по чл. 142а от НК, с оглед съдържанието от обективна и субективна страна на допълнителни признаци в наказателните състави по чл. 159а, ал. 2, т. 3, пр. 2 НК и чл. 159б, ал. 2 НК, се поглъща от последните. Това е така винаги когато трафика – национален или международен, се реализира посредством осъществяване на противозаконно лишаване от свобода на пострадалия. Тук важи всичко казано относно предвидените в чл. 159а, ал. 1 от НК специални експлоатационни цели на трафика на хора, към които се препраща, макар и опосредено и в чл. 159б, ал. 2 от НК.

С най-голяма важност е съотношението и конкуренцията между двете престъпления, съдържащи се в изследвания Раздел IV на Глава Втора от Особената част на НК. Това сравнително изследване се налага с оглед обективната невъзможност в

повечето случаи, противозаконната рестрикция на свободата на движение на пострадалия, забранена в чл. 142а НК, във чисто времеви порядък да се осъществи преди санкционираното в чл. 142, ал. 1 НК насилствено преместване на жертвата от едно място на друго. Абсолютно винаги, когато е осъществено по отношение на дадено лице противозаконно, против волята му, преместване в пространството от едно място на друго, то в този период от време, в който се осъществяват от обективна страна, поредицата от телодвижения на извършителя или извършителите, пострадалото лице е и във фактическа невъзможност, с различна времева продължителност, да се движи свободно. Именно това конфликтно в темпорален аспект състояние на пострадалия е дало основание на практиката (Р 234-03-I н.о.; Р 232-2011-I н.о.) да приеме, че престъплението по чл. 142а НК представлява общ състав по отношение на отвличането, което като специален такъв дерогира приложението му при конкуренция между тях. На практика това означава, че противозаконно лишаване от свобода ще бъде налице единствено при пълна липса на каквито и да е предходни действия по отвличане /насилствено преместване/ на пострадалия. Това ограничава драстично обхвата на чл. 142а от НК, единствено до ситуациите, при които правото на свободно придвижване на жертвата е отнето на мястото /стая, къща, кола и т.н./ където се намира. Разбира се, теоретично е възможна и хипотеза, при която след началото на лишаването от свобода е последвало преместване до друго място, но самостоятелно от жертвата и то по собствена воля, без участието на дееца, като след промяна на местоположението си в пространството осъществяването на престъплението по чл. 142а от НК продължава и е налице практическо ново, второ лишаване от свобода, осъществено по първоначално взетото от субекта решение, но вече на друго място. Този следващ престъпен акт, изразяващ се в нови бездействия на дееца, не представлява самостоятелно престъпление, а се явява част от едно общо продължавано престъпление по смисъла на чл. 26, ал. 1 от НК. При положение, че двата акта са извършени през непродължителен период от време, при една и съща обстановка и при еднородност на вината, при което последващия свързан с лишаване от свобода на новото място, където е отишъл /избягал/ сам пострадалия, се явява от обективна и субективна страна продължение на предшестващия го такъв, в който жертвата е била вече противозаконно лишена от свобода за определен период от време преди да смени местоположението си.

След това обсъждане може да се направи обосновано заключението, че в настоящите текстове на основните състави за отвличане и противозаконно лишаване от свобода, е налице една обстойна наказателноправна уредба на две доста близки, но и различни престъпления против личността. Същите често се съдържат в основата на по-сложни престъпни конструкции, включващи задължително и допълнителни субективни признаци, представляващи различни специални цели. Строгото разграничаване на отделните хипотези при отвличане и противозаконно лишаване от свобода е задължителна предпоставка за точното и правилно приложение на всеки от съставите. Само правилната им употреба е в състояние да гарантира установяването от обективна и субективна страна и на останалите съставомерни факти и обстоятелства, включени в съставите на трафика на хора и другите поглъщащи ги престъпления по Глава Втора и Четвърта от Особената част на НК.

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THE HUMAN CAPITAL AS A FACTOR FOR PROSPERITY AND MAJOR PROBLEMS BEFORE ITS DEVELOPMENT IN BULGARIA

NEVSE ARNAUD[1]

ЧОВЕШКИЯТ КАПИТАЛ КАТО ФАКТОР ЗА ПРОСПЕРИТЕТ И ОСНОВНИ ПРОБЛЕМИ ПРЕДИ НЕГОВОТО РАЗВИТИЕ В БЪЛГАРИЯ

НЕВСЕ АРНАУД

Abstract

The report analyzes the main characteristics of human capital in Bulgaria. The tendencies for negative natural and mechanical population growth are stable; the aging of the population is deepening.

This report includes an analysis of the current problems related to the development of human capital in Bulgaria, as well as their impact on the overall economic development in Bulgaria. The report also identifies perspectives and perspectives on addressing these issues directly related to human capital.

Keywords: *the human capital of Bulgaria, demographic problems, economic growth, education as a factor for human capital*

JEL Codes: *E24, O15*

Въведение

По смисъла на класическата политическа икономия трудът е фактор на производството с особено значение. Икономическата теория разглежда този фактор многоаспектно – като жив и овеществен, прост и сложен и т.н. Носител на труда е човекът-труженик. Той може да бъде с различни умствени и физически възможности, с различна мотивация за труд и т.н.. Именно богатата нюансираност на фактора труд и разнообразието на свойства на носителите на този труд – работниците и предприемачите дава основание да се говори за човешки капитал. Под това понятие се разбира цялото многообразие от елементи, присъщи на физическите носители на фактора труд по смисъла, който са му давали класиците (Луански, П., 1997).

В наши дни човешкият капитал се разглежда предимно като ключов фактор за конкурентоспособността не само на равнище компании, но също така в национален и международен план. Може и трябва да се разглежда като ключов фактор за развитие и просперитет във всяка страна, като ресурс, който се превръщат във фактор за просперитет (Казаков, Ат., 2010).

Според множество направени проучвания Р. България води класациите по най-бързо застаряваща и намаляваща нация не само в рамките на Европейския съюз, но и в света. В този контекст наличието на човешки ресурси и подходяща квалификация са два фактора, чието въздействие ще има нарастващо значение за развитието на страната. Същевременно устойчивостта на човешкия капитал е неизменна предпоставка за икономическо развитие и просперитет през 21-ви век, а в средносрочна перспектива може да се въздейства върху него чрез образованието – както формално, така и неформално (Георгиев, Я. & Трифонова, М., 2013). Поради тази опасност държавната ни политика би следвало да бъде насочена към създаване на по-благоприятни условия за

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устойчивото развитие на човешкия капитал, черпейки опит от добрите европейски практики. В унисон с европейските социални политики все по-често започва да се използва и човешкия капитал на хората с увреждания, в резултат на което се прие специален закон необходим за развитието на социалното предприемачество (Parvanov, P., Krastev, V., Atanasova, I., 2018).

Развитието на човешкия капитал в условията на конкурентна пазарна икономика, е основният фактор за преодоляване на бедността. Тъй като Р. България е най-бедната страна в ЕС, нашата хипотеза е, че тя би трябвало да бъде и страната с най-слабо развитие на човешкия капитал. Потвърждаването на тази теза, както и формулирането на някои съображения, свързани с преодоляването на тази слабост на българската икономика е основната задача (Василев, Б., 2000).

Настоящият доклад представя едно възможно виждане относно концепцията за човешкия капитал, което помага да се разбират и управляват съвременните процеси на развитие.

Целта на разработката е да систематизира и критично обследва проблемната база на процеса на развитие на човешкия капитал от гледна точка на икономическия растеж.

1. Същност и характеристика на понятието човешки капитал

С възникването на класическата икономическа теория през 18 век се заражда и теорията за човешкият капитал. Първоначалното натрупване на индустриален капитал води и до развитието на социално познание, оказало съществено влияние при развитието на икономическата наука. Първоначално връзката между инвестицията във физически капитал и вложенията на икономически ресурси за повишаване квалификацията на работната сила се прави от Адам Смит в "Богатството на народите" (Smith, A., 2003). Според него "когато се съоръжава някаква скъпа машина, обикновено се разчита, че по-голямото количество работа, която тя ще изпълни, докато се износи, ще възстанови изцяло капиталът, изразходван за нея поне според критерият за нормалната печалба. Човешкият капитал е израз на въздействието върху първоначалния човешки материал, с което се постига ново качество на труда като фактурна услуга. Всяко такова въздействие умножаващо човешките сили, развива опита и променя производителността. Т.е. когато се погледне на човека през призмата на настъпилите в него изменения, в резултат на целенасочените въздействия, той само привидно е същият, но в икономически смисъл това вече не е така. Той има нови качествени характеристики и свойства - натрупаните познания, опитът и променената квалификация в съчетание с носителя на тези нови свойства вече е човешки капитал (Казаков, Ат., 2010). Спорно е, но ние приемаме за човешки капитал дори зародишът на определена фаза от неговото развитие.

Съществуват различни концепции за същността и съдържанието на понятието „човешки капитал“. Много български и чуждестранни изследователи, които се занимават с проблемите пред неговото развитие, са склонни да поставят знак на равенство между понятията „човешки капитал“ и „социален капитал“. Една от причините за склонността към подобна еквивалентност е, че доста често човешките ресурси в рамките на националната икономика се разглеждат единствено и само от макроикономическа гледна точка като един от основните видове производствени ресурси и фактори, наред с труда, земята, капитала, предприемаческата инициативност и информацията.

От икономическа гледна точка, капиталът може да се разглежда като категория, свързана с придобиването в резултат на инвестиране на материални, нематериални или финансови активи, които с течение на времето пораждат поток от приходи (http://trudipravo.bg/kompyutarni-produkti-epi/kompyutarni-informacionni-produkti-epi/epi-

trud-i-sotzialno-osiguryavane/podbrani-statii/1094-za-znachenieto-na-investitziite-v-choveshkiya-kapital). Човешкият капитал се разглежда като съвкупността от личните качества, знания, компетентности и умения“ на всеки един индивид, работещ в дадена организация или икономика. Процесът свързан с неговото създаване е сложен и продължителен, като вложените средства се очакват да се възвърнат в един продължителен период от време, през който въздействието на множество фактори и условия могат да му окажат негативно или благоприятно влияние. Тук се крият и рисковете, свързани с реализираните инвестиции и очаквания бъдещ доход от хората, въз основа на полученото образование, усвоени компетентности и компетенции.

Човешкият капитал е смятан за един от основните фактори, влияещ върху производството, който може да повиши ефективността, производителността и иновациите, допринасяйки значително за икономическия растеж на микро и макро ниво (Симеонова-Ганева, Р., 2005, стр. 27-39). Също така човешкият капитал може да се приеме като движеща сила, мощен катализатор при преодоляването на икономическите колебания и основен компонент за изграждането на устойчиво развитие в дадена държава. Човешкия капитал е основен източник за благоденствието на икономиката. (Казаков, Ат., 2010).

2. Основни проблеми пред развитието на човешкия капитал в България

2.1. Преглед на текущите демографски и икономически тенденции по отношение на човешкия капитал в България

Основните тенденции, характеризиращи демографската промяна, на която България е свидетел са застаряването и отрицателният естествен прираст. Ако се вгледаме по внимателно ще разкрием дълбоко вкоренени процеси, които оказват до известна степен влияние и затрудняват страната в опитите й да създаде стабилно икономическо развитие (Георгиев, Я. & Трифонова, М., 2013).

Към 31 декември 2018 г. населението на България е 7 000 039, което представлява 1.4% от населението на Европейския съюз. В сравнение с 2017 г. населението на страната намалява с 49 995 души. През 2018 г. в страната са регистрирани 62 197 живородени деца и в сравнение с предходната година броят им намалява с 1 758 деца. Броят на умрелите през 2018 г. е 108 526 души, а коефициентът на обща смъртност - 15.4‰. Спрямо предходната година броят на умрелите намалява с 1 265 (НСИ, 2018).

Според НСИ приблизително 70% от този спад, или около 390 000 души, се дължи на негативната тенденция в естествения прираст (повече смъртни случаи, отколкото раждания), а останалите 30% се приписват на външната миграция, изчислявана на около 175 000 души (Преброяване на населението на Република България - окончателни данни, 2011).

Статистически погледнато това твърдение, без съмнение е правилно, но отрицателният ръст на населението е резултат също така и от профила на емигрантите. Това, което е индикирано в много изследвания относно склонността към миграция, е видно и от регистрите, съдържащи данни за българските граждани, официално сменили местоживеенето си в друга страната. Половината от тях са на възраст между 20 и 39 г., жените са повече от мъжете с 10% (Национална демографска стратегия на Република България 2012-2030).

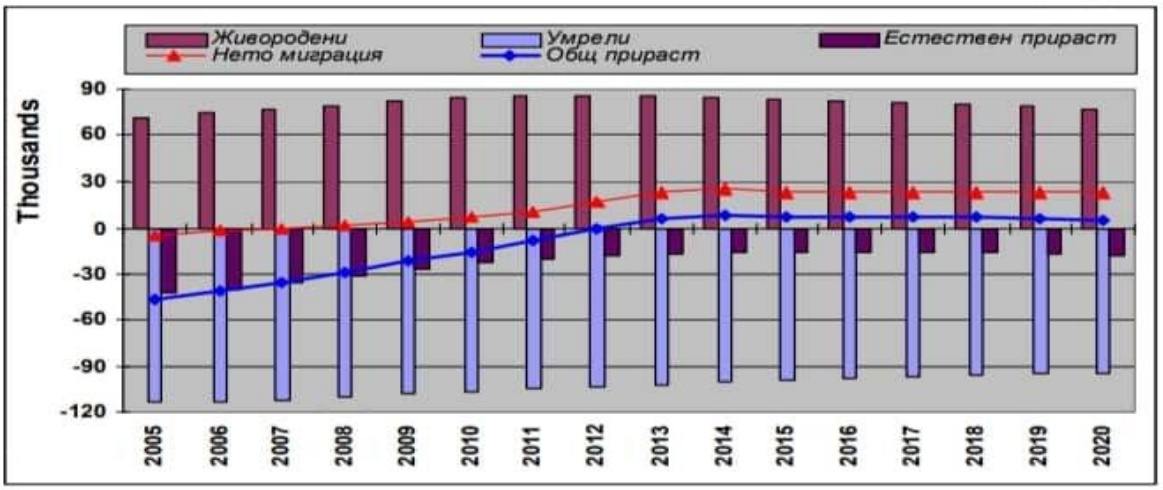
Освен добре познатите икономически последици (отлив на опитна работна ръка и „изтичане на мозъци“), емиграцията има дългосрочно негативно действие и върху възпроизводството на населението. Емиграцията на жени в детеродна възраст води до по-ниски нива на раждаемост в бъдеще и не може да контра-балансира или поне да се

смекчи спада в населението – този факт широко пренебрегван в много официални документи (Преброяване на населението и жилищния фонд в България, 2011).

По-важен е фактът, че този спад, наблюдаван в рамките на по-малко от само три десетилетия, отрежда на България мястото на най-бързо демографски смаляваща се страна-членка на ЕС от 2000 г., надмината в този дванадесетгодишен период само два пъти от Латвия. Евентуално намаляването на броя на населението е свързано и с детската смъртност, от което страната е на второ място в ЕС след Румъния в последното десетилетие. С настъпващите демографски промени могат да подтиснат икономическия растеж и така да застрашат по-нататъшното сближаване на доходите в рамките на ЕС (Естествен прираст на населението, Евростат, 2000-2011).

Необходимо и възможно е да се постигне забавяне на темповете на намаляване на броя на населението на България с тенденция към стабилизирането му в дългосрочен план на равнище около 7.5 млн. човека и осигуряване на високо качество на човешкия капитал, включващ хората с тяхното здравословно състояние, способности и умения (вж. Фигура 1).

Фигура 1



Източник: https://www.iki.bas.bg/RePEc/BAS/ecbook/B_strategy.pdf

Тук не се разглежда въпроса за промяна на модела на възпроизводство на населението, а за процеси, които могат да бъдат повлияни от ускореното развитие на икономиката в резултат от стратегия за отложени раждания на родители без работа или с ниски доходи, висока детска смъртност, висока преждевременна смъртност при 40-50-годишните, ниска очаквана продължителност на живота и други (Димитров, М., 2007).

От особено важно значение при съвременни условия не е толкова броят на населението, колкото състоянието на човешките ресурси, а именно способностите, уменията и здравословното им състояние, т.е. човешкият капитал, с оглед създаването на най-добро качество на живот за всички граждани (Barro, Robert J.,1991).

Главна цел на Стратегията е да се забавят темповете на намаляване броя на населението с тенденция стабилизирането му в дългосрочен план и осигуряване на високо качество на човешкия капитал, включващ хората с тяхното здравословно състояние, способности и умения. Това може да се постигне с оптимизиране на баланса на населението, тоест с установяване на такива пропорции по възраст, образование, здравен статус и пол, които да водят до устойчиво повишаване на качеството на живота на хората. Качеството на човешкия капитал и балансът на населението са основни компоненти на стратегическата цел.

Като страна-членка за България най-важни са отношенията с ЕС. Страната трябва да се възползва максимално от това, че става част от огромен пазар (повече от 13 г. сме в ЕС) с платежоспособни потребители.

По-късно приетите страни-членки в ЕС имат определена нагласа да изнасят част от производството в Източна Европа. А България в конкуренция с останалите новоприети държави трябва да привлече част от това производство, предлагайки подходящи условия за инвестиции, работна сила и възможности за реализация на продукцията (Димитров, М., 2007).

От казаното дотук може да се заключи, че демографското развитие на българското население има нужда от поредица мерки (политики), които трябва да имат за приоритет създаването на благоприятна за семействата среда вместо да се абсолютизира ролята на финансовите стимули.

Изисква се политически отговори, подкрепящи прилагането на гъвкави решения за пазара на труда при набюдаването на наличната работна сила и очакваните нужди на пазара на труда по отношение на квалификацията и професионални умения на работната сила за да не се задълбочава влошаването на демографската структура (Георгиев, Я. & Трифонова, М., 2013).

2.2. Развитие на човешкия капитал чрез образование - дефицити в регионалната конкурентоспособност на формалното образование в България

Другият основен инструмент, който оказва влияние върху развитието на човешкия капитал е образователната система. България е на второ място с най-нисък дял на публични разходи в образованието (4,10% от БВП), последвана от Румъния (3,53% от БВП), регистрирана със значителен спад от нивата над 4% в периода 2015 г. – 2018 г. С най-големи правителствени инвестиции в образованието принадлежат на Естония (6,09%), като се има предвид, че най-скорошната статистика за Естония е към 2017 г., а за 2018 г. с най-голям дял БВП е регистриран в Литва (5,38%), докато повечето страни в групата варират около 4-процентни стойности (Tivig, Th., Frosch, K. & Kühntopf, St., 2008, p. 33).

Таблица 1 Сравнение на разходи за образование по страни (2018 г.)

Страна	Общо публични разходи (% от БВП)	Публични разходи (% от БВП)	Частни разходи (% от БВП)	Разходи на ученик/студент (в СПС, евро)
България	37,4	4,1	0,63	2639,7
Хърватия	40,7	4,27	0,26	3796,1
Чехия	43,7	4,24	0,57	4600,5
Естония*	45,5	6,09	0,36	4172,1
Унгария*	52,2	4,88	0,54	3993,4
Латвия	43,4	5,01	0,57	3628,6
Литва	42,4	5,38	0,69	3739,1
Полша*	44,6	5,1	0,77	3927,8
Румъния	40,1	3,53	0,12	2078,6
Словакия	40	4,22	0,73	4173,1

Източник: по данни на Евростат

Ако публично финансиране за образование, бъде разпознато като ключов приоритет за развитието на човешкия капитал и икономическия растеж има само две алтернативи за набавяне на допълнително публично финансиране за образование:

1) преминаване към фискален модел от над 40% правителствено преразпределение;

2) пренасочване на средства от други пера, напр. „Отбрана и сигурност". И при двете алтернативи се изисква внимателен задълбочен анализ, тъй като излизат извън обсега на инициативи за политики, а се отнасят до принципните функции на държавата и правомощията на правителството.

С почти еднакви резултати са отново на дъното България, Румъния и Хърватия (варирайки между резултат 3,1 – 3,2). Въпреки спада на Словакия и Унгария в сравнение с Индекса за просперитета, другите страни демонстрират стабилни постижения, като Естония, Литва и Чехия водят в региона.

България заема 28-мо място по основното образование (нетно, %), което е значително по-добре от останалите, чиито позиции варират между 36-та и 110-та. Въпреки това, количеството видимо не означава качество, а по качество страната е класирана 67-ма, следвана единствено от Румъния, която е на 84-то място, докато най-високо оценената страна е Естония, на 19-та позиция.

Таблица 2 Качество на образователната система

Държава	Резултат	Място
България	3,2	98
Хърватия	3,2	99
Чехия	3,9	59
Естония	4,1	49
Унгария	3,4	90
Латвия	3,6	74
Литва	4	54
Полша	3,7	68
Румъния	3,1	108
Словакия	2,8	120

Източник: Глобален индекс за конкурентоспособност

България заема последното 70-то място по записани в средното образование (брутно, %). Повечето от държавите в тази група варират около 40-то място, а Естония отново заема представителната 19-та позиция. Всички 10 държави регистрират високи резултати по висшето образование (брутно, %), което ги поставя в първите 50 на глобално ниво. Литва води със 74% на 16-то място, а България остава 41-ва с 56,9%.

Погледнато от тези данни, може да се твърди, че един от отличаващите проблеми на българската образователна система е непостоянността на постиженията сред трите нива – основно, средно и висше. Такъв фактор възпрепятства процеса за устойчивост и предвидимост на развитието на човешкия капитал (Георгиев, Я. & Трифонова, М., 2013).

3. Перспективите за развитие на човешкия капитал

3.1. Подобряване на съответствието между образованието и обучението с потребностите на пазара

Нарастващата сложност и разнообразие на стоките и услугите, които стават възможни благодарение на цифровизацията, води до създаване на множество нови видове работни места. Американската търговска камара в България препоръчва следното:

Очертаване на настоящите и бъдещи потребности на бизнеса и промяна на учебните програми, за да отразяват потребностите на компаниите, така че училищата и университетите да осигуряват на бизнеса завършили образованието хора с необходимите умения. Тясното сътрудничество с бизнеса при определяне на учебните програми ще направи България по-привлекателна за нови инвестиции (Пачев, Т., 2009).

Инвестирането в хората, придобиването от тях на нови знания и умения, обучението през целия живот са фактори, които ще доведат до постигане на икономически и социален напредък. В този смисъл целите на оперативната програма "Развитие на човешките ресурси" по отношение на образованието и обучението са концентрирани в две приоритетни направления:

- подобряване на качеството на образованието и обучение в съответствие с потребностите на пазара на труда за изграждане на икономика, основана на знанието и подобряване на достъпа до образование и обучение.

Несъмнено е влиянието на качественото образование върху успешната бъдеща трудова заетост и професионална реализация. Следователно необходимо е осъществяването на инвестиции в човешкия капитал през целия живот (https://www.mlsp.government.bg/ckfinder/userfiles/files/politiki/demografska%20politika/otcheti%20i%20planove/Monitoring%20report%20on%20active%20ageing%202012-2014.pdf).

Количеството и качеството на човешкия капитал в най-голяма степен определят дългосрочния потенциал за развитие на отделния човек, фирма или държава в глобалната икономика.

Развитието на българската икономика, ориентирана към европейската икономика и основана на знанието, налага преосмисляне и засилване на връзките между образованието, научноизследователския сектор и бизнеса. Иновационният подход и създаването на продукт с висока добавена стойност изискват преди всичко наличието на достатъчно и добре подготвени кадри, които да разработват нови продукти и технологии и да подпомагат прилагането им в практиката (https://www.capital.bg/biznes/predpriemach/2007/03/23/321807_investicii_za_uchene_prez_celiia_jivot/).

Качествените характеристики на населението са определящ фактор за икономическата активност и заетост на населението, равнището на безработица. Професионалната подготовка и квалификация са също значим фактор за увеличаване заетостта на населението, едно от големите предизвикателства на България по пътя на интеграция в ЕС, за социална интеграция на значими групи от населението, на тези които са с ниско образование, без професионална подготовка и други проблеми, което ги прави нежелани от организациите.

3.2. Националната политика в областта на науката като фактор за развитието на човешкия капитал

Проблемът за образуването на национална политика в науката често се препокрива с проблема за образуванетонето на една или друга бюджетна политика в сферата на науката. Този проблем е характерен, както в ЕС и отделните му страни членки, включително и в България. Има съществена разлика между тези два проблема, или по-точно между тези две политики.

Националната политика в науката е съвкупност от основни цели, стратегии, задачи и тактически мерки за постигане на определени цели от „по-високо ниво” за съответното общество, за дадената страна, в рамките, на която тя се провежда.

Тези цели могат да бъдат, напр.:„подобряване на конкурентоспособността на националната икономика”; „повишаване на националната сигурност”; „повишаване на ролята на съответната страна в регионалните международни отношения или международни икономически отношения”; „осигуряване на устойчиво развитие”, „разширяване влиянието на националната култура и традиции или запазване на националната културна идентичност” и пр.

Политиката на подпомагане на инвестициите в човешки капитал- образователна, здравна и социално-осигурителна реформа, е единствената позитивна алтернатива пред българското общество.

Предложенията за изменение на икономическата политика в областта на човешкия капитал могат да бъдат обобщени както следва:

- повишаване на дела на държавните разходи за образование, здравеопазване, наука и иновации до средното равнище за ЕС;
- реформа в здравноосигурителните системи с оглед фокусиране върху превантивните дейности и премахване на преките плащания на здравноосигурените към лекарския персонал;
- образователна реформа, насочена към повишаване конкурентоспособността на българското образование и намаляване броя на незавършващите начално и средно образование, преодоляване на процеса на обезценяване на човешкия капитал в България (Димитров, П., 2013).

3.3. Повишаване качеството на човешкия капитал чрез осигуряване на условия за устойчиво икономическо развитие

За осъществяването на този приоритет е необходимо:

- осигуряване на условия за по-добро отглеждане на децата;
- осигуряване на по-добри условия за съчетаване на родителските и трудовите ангажименти чрез постигане на ефективно равенство между половете в институциите и в семейството;
- подкрепа на семейството чрез създаване на условия, допринасящи за неговата стабилност и по-пълна защита на интересите на децата и жените;
- осигуряване на условия за по-добро социално обслужване и повишаване качество на живот на възрастните хора;
- създаване на условия за задържане на младите хора в селските райони за преодоляване на тенденцията към застаряване на населението в тях;
- подобряване на транспортната, търговската и други обслужващи инфраструктури на селските и пограничните райони за задържане на населението в тях;
- оптимизиране на концентрацията на населението в големите градове и столицата;
- създаване на адекватни материални условия за поддържане и подобряване развитието на човешкия капитал чрез повишаване на инвестициите в образованието и здравеопазването.

Както се вижда ако се осигурят подобни условия, България би могла в кратък срок да преустанови спада в броя на населението, да увеличи средната продължителност на живота и да забави влошаването на възрастовата структура на населението.

Един от основните фактори, които трябва да се вземат предвид, е присъединяването към ЕС, което несъмнено ще предизвика конвергенция в демографската област (Димитров, М., 2007).

Заключение

По силата на обективните обстоятелства се събират достатъчно аргументи на твърденията, че в бъдеще ще се даде приоритет на човешкия капитал. Решаващите сили за просперитета на всяка нация са знанието, интелектът и качеството на човешките ресурси.

Развитието и запазването на човешкия капитал е основен фактор за запазването/развитието на конкурентоспособността, като представлява важен обществен въпрос, нуждаещ се от последователни политики с поглед към бъдещето. Човешкият капитал е пряко свързан с много индикатори в демографията, миграционните процеси и образованието.

Стабилното развитие на човешкия капитал е важна предпоставка за икономически растеж и благосъстояние през XXI век. В средносрочен план той може да бъде моделиран чрез образованието – както формално, така и неформално. Основните предизвикателства пред политиките са насочени към:

- балансирането на търсенето и предлагането на пазара на труда чрез по-добро планиране, ранно кариерно ориентиране и ревизия на учебните програми според препоръките на частния сектор;

- постигане на последователност в представянето на формалната образователна система в трите й степени – основно, средно и висше образование;

- преустрояване на учебните занятия, добавящи стойност, т.е. преобразуване на образователния процес от практически умения и знания, необходими за развитието на икономиката на XXI век с поглед към по-добро бъдеще;

- ефективно ангажиране на всички заинтересовани страни по отношение развитието на човешкия капитал.

От направеният анализ се показва, че ако не настъпят промени в икономическата, образователната и демографската политика, ще продължи неблагоприятното влияние на човешкия капитал върху икономиката на страната.

Човешкият капитал е двигателят на промяна и просперитет за всяка една държава.Всичко в едно общество се предопределя от качеството на човешкия капитал.

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MANIFESTATIONS OF THE "CORRUPTION" IN THE BULGARIAN ECONOMY

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ПРОЯВЛЕНИЯ НА "КОРУПЦИЯТА" В БЪЛГАРСКАТА ИКОНОМИКА

ЙОАНА ВАСИЛЕВА

Abstract

Corruption is an obstacle for the development of the modern societies. It can manifest itself in both the public and the private sector. If there is not a definite state anti-corruption policy, it can cause serious material and non-material damages to the parties in a short period of time. These events are most often observed in the public sector, especially when large amounts of money are concerned, as well as in the public-private partnerships. The Bulgarian anti-corruption policy is in line with the European one, and despite it is not so successful, it continues to have a positive impact in terms of limiting the corruption.

Keywords: *corruption, corruption in Bulgarian economy, corruption's development*

JEL Codes: *D73, O17*

Въведение

Корупцията е иманентно присъща, както в българската икономическа действителност така и в икономиките на останалите държави членки на Европейския съюз. Съществуват редица правни дефиниции, конструирани от различни неправителствени организации и всичките водят към един извод, че корупцията може да се разбира като злоупотреба с власт за лична или групова изгода. Характерно за това „явление" е, че то засяга най-вече публичния сектор, където може да се злоупотреби с обществена служба за лично облагодетелстване или за свързани с него лица. Корупционните действия най-често се реализират, когато едно длъжностно/служебното лице получи дар или облага, в резултат на което то използва делегираните му правомощия, за да осигури достъп на други лица до блага или услуги, които иначе биха били недостъпни за тях.

1. Усещане за корупция

В някои съвременни общества съществува очакване на реципрочност в отношенията с околните и стремеж към поддържане на мрежата от социални контакти с цел подсигуряване на обществена позиция/статут, власт, влияние, материална обезпеченост, а тези тенденции недвусмислено разкриват и потвърждават корупционните нагласи на индивидите (Витанова, В., 2010).

Корупцията е явление, което пряко влияе върху социалната действителност, икономическото развитие и основните демократични ценности изповядвани в нашето съвремие. Тя може да действа като мощен стимулатор за изкривяване на възприятието на обществото за това кое е правилно и кое грешно. При липсата на релевантна политика, насочена срещу ограничаване проявлението на корупционните практики, част от обществото може да се възползва от тях и да започне да се грижи за личното си облагодетелстване. Това от своя страна може да рефлектира върху голяма част от

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основните принципи характерни за развитието на съвременното общество. Превесът на личния интерес над обществения такъв оказва негативно влияние, като намалява или изопачава фундаменталната роля на държавата в качеството и на гарант за еднаквото прилагане на законодателството.

Различните общества по различен начин приемат корупцията и усещат по различен начин нейното положително или отрицателно въздействие. Основната грижа на обществото е да направи своя морален избор: дали да провежда антикорупционна политика и да приеме, че тази дейност е нежелателна и да има ясна представа, какво представляват корупцията, нарушаването на определени ценности и принципи и приетите социални норми (Стемплевска, Л., 2018) или да се възползва максимално от благата, които тя може да му донесе. Има ситуации, при които, колкото и да е странно корупцията може да окаже положителен ефект върху развитието на икономиката, но като цяло този ефект е временен и не е устойчив (Tullock, G., 1996).

От друга страна резултатът от наличие на корупционни практики води до подкопаване на доверието към държавните органи (Национална стратегия за превенция и противодействие на корупцията в Република България 2015-2020), изпълняващи правотворческите и правоприлагащите си функция. Неефективността на съдебната система, по отношение на ефективното санкциониране на корупционни действия, засилва увереността и чувството за безнаказаност при корумпираните лица. В резултат на което обществото, когато загуби вяра в ефективността на провежданата държавна антикорупционна политика се принуждава да се съобразява с явлението „корупция“ и постепенно тя започва да се приема за „нещо нормално“ в ежедневието им. Ефектът е негативен за обществото, върху устойчивото развитие на икономиката, а липсата или силноограничената конкурентна среда води до намаляване на конкурентоспособността на търговците.

В бизнес средата корупцията създава несигурност, подкопава ефективността на публичните разходи и налява публичните средства за инвестиции. Това прави съответното място по-малко привлекателно за бизнес, като така намалява частните инвестиции и конкурентоспособността и не позволява на икономиката да реализира своя потенциал. Освен това корупцията възпира данъкоплатците да плащат данъци (Европейски семестър - тематичен информационен документ. Борба с корупцията). Всичко това оказва влияние на свой ред върху финансовите ресурси в публичния сектор, намалява данъчните приходи и допълнително ограничава капацитета на публичния сектор за инвестиране.

От друга страна корупцията спомага за развитието на сивата икономика, която пречи на пазарната икономика. Въпреки това тя има и положителни черти, като например увеличаването на доходите на част от населението, за сметка на държавните приходи. Именно нелегалната икономика спомага да се смекчат негативните последици от социално-икономическите явления като инфлация, безработица и други.

Като обобщение на всичко посочено до този момент може да се посочи, че корупцията пречи за осигуряването на адекватни публични услуги и създава неблагоприятна среда за развитието на частния сектор. Според провежданите емпирични изследвания относно влиянието на корупцията се правят изводи за значителния отрицателен ефект върху икономическата дейност и по-конкретно тя намалява цялостните инвестиции и икономическия растеж, променяйки структурата на държавните разходи, намалявайки делът на разходите за образование (Мауро, П., 2000).

2. Корупционни проявления

Корупцията може да се появи на всички нива на държавното управление. Възможно е да се прояви на местно, централно или международно ниво. Потенциалните ѝ места за развитие са на всяко едно ниво на реализиране на държавната политика. Там където има лице, заемащо висша публична длъжност, там има и потенциална възможност за възникване на корупционна практика. Съгласно българското законодателство, корупция е „налице, когато в резултат на заеманата висша публична длъжност лицето злоупотребява с власт, нарушава или не изпълнява служебни задължения с цел пряко или косвено извличане на неследваща се материална или нематериална облага за себе си или за други лица“. Тази правна дефиниция бе въведена с новоприетия „Закон за противодействие на корупцията и за отнемане на незаконно придобитото имущество“ (ЗПКОНПИ) през 2019 г., обединявайки в себе си двата основни антикорупционни закони: „Закон за предотвратяване и установяване на конфликт на интереси“ и „Закон за отнемане в полза на държавата на незаконно придобито имущество“. До влизането в сила на ЗПКОНПИ все още съществуваше законова празнота по отношение на легалното определение на корупцията. Поради този факт всяко едно противоправно деяние на лица, заемащи определена длъжност в държавния апарат можеше да бъде определяна като корупционна. В резултат на което общественото мнение за това дали има или няма корупция в Р. България е повече от притеснително, измерено и представено чрез Индекса за възприятие на корупцията (CPI). В тази връзка Р. България се намира на 77-мо място в световната класация и на последно място в Европейския съюз през 2018 г. с индекс 42 пункта. Данните от този индекс за периода 2012-2018 разкриват, че въпреки предприетите антикорупционни мерки липсва удовлетворяването на обществените очаквания за ефективна борба с корупцията. Това може да се дължи и на провежданата държавна политика, че корупционните действия са административни нарушения и санкциите са административнонаказателни. Само в случаи, когато противоправните деяния са престъпления, тогава по смисъла на Наказателния кодекс може да се наложи ефективно или условно лишаване от свобода.

Основната държавна стратегия за разкриване на корупционни проявления е чрез проверка на имуществено състояние на лицата, заемащи висши публични длъжности. Прозрачността при имуществено състояние на лицата, заемащи висша публична длъжност е добра практика, която улеснява откриването на потенциални случаи на незаконно обогатяване, конфликт на интереси и корупционни практики. Именно следвайки тази правна логика Комисията за противодействие на корупцията и за отнемане на незаконно придобитото имущество разчита основно ма проверка на подадените декларации по чл. 35, ал. 1. т.1, 2 ,3 и 4, които само за 2018 г. са били 9 066 бр. (Доклад за дейността на комисията за противодействие на корупцията и за отнемане на незаконно придобитото имущество за 2018 г.).

2.1. Корупционни проявления в публичния сектор

Публичната сфера е най-благоприятна за възникването и развитието на корупционни практики. Основните причини за това са наличието на огромни финансови ресурси и лица, заемащи висши публични длъжности, които следва да ги разходват, съобразно провежданите държавни политики. В практиката ежедневно лица, оправомощени с определени държавновластнически правомощия взимат решения, с които е възможно те да получат неследваща им се облага. Именно на тези лица е гласувано доверие, че ще защитават обществения интерес и ще се разпореждат само в неговата защита. Главната опасност която може да доведе до възникване на корупция се

състои в сблъсъка между обществения интерес, който те са приели да защитават със заемането на определена длъжност и личния си интерес, който всеки един човек има и следва. Този сблъсък е ежедневен и нормален, до момента в който лицето, заемащо висша публична длъжност не предприеме действия, с които да получи неследваща му се облага, именно защото заема определената длъжност. Тогава възниква частният интерес, в резултат на което вече имаме конфликт на интереси, който може да доведе до корупция. Благодарение на делегираните им правомощия те могат да взимат решения или да оказват влияние върху други да вземат „благоприятни решения“, с цел лично или групово облагодетелстване. Поради това може да се твърди, че най-сериозно от корупция са засегнати институциите и структурите, реализиращи основните функции на държавата (Krastev, V., Koyundzhiyska-Davidkova, Bl. & Petkova, N., 2019).

Процесът по реформиране на публичната администрация, чрез прилагане на добри антикорупционни практики е перманентен. Непрестанно се въвеждат добри европейски практики, които следва да оптимизират процесите, да се ускори работата и да се намалят сроковете за предоставяне на административни услуги. Именно бавната и тромава администрация е един от основните предпоставки за възникване на корупционни практики (Марков, К., 2000). Бизнесът бива принуждаван да заобикаля дългите срокове и тромавите процедури чрез помощта на „услужливи“ длъжностни лица, а за услугата им се отблагодаряват чрез различни дарове. Проблемът в това сътрудничество е, че то е изгодно за двете страни и е много трудно да бъде разкрито. Даването и взимането на подкуп е престъпление по смисъла на чл. 301 и 304 от Наказателния кодекс и всяка една от страните има интерес това деяние да остане скрито. Това законодателно решение до известна степен предопределя и ограниченият брой подавани сигнали за корупция.

Законодателната, изпълнителната и съдебната власт предоставят благоприятна среда за възникването и реализирането на корупционни практики, които оказват негативно влияние върху доверието на обществото в безпристрастното и обективно вземане на решения. Концентрация на потенциални проявления на корупция има при:

- *Назначаването на държавни служители* - при тези назначения в повечето случай е възможно да възникне конфликт на интереси, който да се реализира в корупционна практика. Корупционното проявление тук е свързано с възникването на частен интерес за лице, заемащо висша публична длъжност. Съгласно чл. 53 от ЗПКОНПИ „частен е всеки интерес, който води до облага от материален или нематериален характер за лице, заемащо висша публична длъжност, или за свързани с него лица, включително всяко поето задължение“. Много често при избора и назначаването се реализира „непотизъм“, но той сам по себе си не е правонарушение, стига да не е извършено правонарушение. Въпреки това роднинските назначения може да доведат до загуба на доверие към институцията, както и предположения за нивото на компетентност и способността му на новоназначения роднина да се справя със задълженията си.
- *Приватизация* - корупционните прояви при раздържавяването на българската икономика най-често се дължат на политическата корупция. Така например А. Нончев (2013) свързва корупционните практики с източване на държавни и търговски банки, както и овладяването на „входа и изхода“ на държавните предприятия. Най-често използваната практика при приватизацията е чрез „преговори с потенциален купувач“, което позволява задкулисно договаряне и незаконно облагодетелстване на служители от различни равнища, ангажирани със сделката, както и чрез взимане на „лоши“ кредити за извършване на приватизационната сделка, създаването на офшорни компании, чрез

които се участва в касовата приватизация и приватизационните фондове при масовата приватизация и други (Нончев, А., 2013).

- *Обществени поръчки* - при тях наличието на корупционни прояви е най-голяма. Опасността от възникването им се дължи на това, че обществените поръчки са един от основните инструменти за преразпределяне на значителна част от държавния бюджет, както на централно, така и на местно ново. Въпреки непрекъснатите реформи, целящи премахването на възможни корупционни практики като регистъра за обществени поръчки и единната централизирана платформа за възлагане на електронни обществени поръчки, възможностите за корупционни практики си остават. Това не се потвърждава от съдебната практика в България, „тъй като корупцията и неефективността понякога са трудно различими“ (Клитгард, Р., Маклей-Абарова, Р. & Парис, Л., 2006).

Нарушава се ефективността на разходваните средства за осигуряване на обществени блага като инфраструктура или здравеопазване. Например наличието на корупция в публичните търгове може да доведе до закупуване на стока (услуга) на по-високи цени и по-ниско качество отколкото в случаите, когато няма корупция. Това води до растеж и неефективност на разходите. Избирането на оферта с по-ниска цена и по-добро качество на стоката (услугата) би позволило да се намалят разходите и да се разпределят спестените средства за други нужди.

- *Концесии* - чрез тях възниква публично-частното партньорство. При тях икономически оператор изпълнява строителство или предоставя услуги по възлагане от публичен орган чрез концесия за строителство или концесия за услуги(Закон за концесиите). Именно при такива взаимоотношения възможността за превес на частния над държавния е възможен, особено когато няма прозрачност и ясна държавна политика.
- *Прилагане на разрешителни и лицензионни режими; събиране на данъци, мита и такси* - основна роля играе моралът на лицата, на които са им делегирани държавновластнически функции.

Българската икономика като цяло се реализира в силно корупционна среда, видно от всички публикувани доклади на Комисията до европейския парламент и съвета относно напредъка на България по механизма за сътрудничество и проверка (https://ec.europa.eu), която оказва негативен ефект върху икономиката. В сходна на българската действителност се намират и други европейски държави. Така например според изследване на Евробарометър през 2013 г. за възприемането на корупцията и за опита с нея на равнището на ЕС над 40% от дружествата смятат, че корупцията, както и покровителстването и непотизмът, са проблеми за извършването на стопанска дейност. За 50% от представителите на строителния отрасъл и 33% от представителите на телекомуникационните/ИТ дружества корупцията е сериозен проблем за осъществяването на бизнес. Колкото по-малко е дружеството, толкова по-често корупцията и непотизмът са източник на проблеми за извършването на стопанска дейност (Доклад на ЕС за борбата с корупцията, Брюксел 3.2.2014), а икономиката ни основно разчита на микропредприятия. Въпреки съществуващото преобладаващо мнение, че корупцията е нежелана, според изнесени данни от Център за изследване на демокрацията склонността към корупция сред фирмите в частния сектор е висока. Така например „едва 46,3% от интервюираните ръководители биха отхвърлили предложение за корупционна сделка, ако резултатите от нея са добри за фирмата. Безусловно подобен тип сделка биха подкрепили 9,4%“ (Корупцията в частния сектор в България, ЦИД, 2018). Друго заключение от проведеното анкетно проучване е, че сравнително често се наблюдава готовност за участие в корупционни отношения както сред клиентите на частните фирми, така и сред техния персонал.

2.2. Корупционни проявления в частния сектор

В частния сектор явлението „корупция“ може да засегне както търговците, търговските дружества така и юридическите лица с нестопанска цел. Основният проблем за частният сектор е, че вредоносните последици от една корупционна практика рефлектират директно върху дейността и капитала на дружеството, което може да доведе до прекратяване дейността на дружеството и освобождаване на наетите лица. Ако последиците от корупционните практики могат да окажат положително въздействие за бизнеса тогава е напълно възможно те да бъдат желани и защитавани. В тази връзка като две основни категории корупционни практики може да се посочи избягването на допълнителните разходи и получаване на конкурентно предимство. Допълнителните разходи могат да възникнат в резултат на тромава бюрократична система в публичната администрация или прекалено усложнени процедури за получаване на всевъзможни разрешителни, лицензии и други. Всяко едно забавяне води в повечето случаи до загуби и в такива ситуации е възможно и логично губещият да потърси възможности за ускоряването на проблемните процедури. Корупционните проявления могат да се изразят чрез заобикаляне на плащане на данъци, мита, ДДС, умишлено неспазване на държавни стандарти и други чрез даване най-често на подкуп, дар или услуга. Резултатът от даването на тези „облаги“ води до неоснователно обогатяване на държавните служители, което понастоящем е обект на мониторинг от страна на вече коментираната Комисия за противодействие на корупцията и за отнемане на незаконно придобитото имущество.

Проявлението на корупция може да бъде насочени не само навън но и навътре към самото дружество. Така например конфликт на интереси е възможен да възникне както в публичната сфера, така и в частния сектор (Кръстев, В., 2015). В двата варианта прозира корупционно поведение, което води до неоснователно обогатяване на едно лице за сметка на държавния бюджет или частния капитал.

Заключение

Факторите, които дават материални резултати под формата на възнаграждение и влияят върху възможностите на населението са работата, заеманата позиция в обществото, желанието за професионално развитие и качеството на личния живот. За да се развива икономиката на дадена страна трябва да бъдат създадени подходящи условия за бизнес, защото предприятията са тези, които плащат данъци и захранват държавния бюджет.

Въпреки слабостите, свързани с ефективността на използване на публичните ресурси, функционирането на надзорните институции и на правосъдната система корупционните прояви се ограничават постепенно в резултат на провежданите европейски политики. Каквито и политики да се внедряват изкушението за използване на служебно положение за лично облагодетелстване винаги ще е налице. Приоритетно моралът, сигурността, доброто финансово положение и удовлетвореността от извършваната работа могат да окажат влияние при вземането на правилното (общественополезно) решение и така да се ограничат постепенно корупционните проявления. Не на последно място държавата следва да докаже пред обществото, че има твърда решителност (не избирателна) за ефективно санкциониране на лицата, злоупотребили със служебното си положение за лично или за свързани с тях лица облагодетелстване.

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EUROPEAN UNION LEGISLATION FOR ENCOURAGING THE SOCIAL ENTREPRENEURSHIP FOR PEOPLE WITH DISABILITIES

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Abstract

The present study analyzes the legal framework, which regulates social entrepreneurship in the European Union and the Republic of Bulgaria. Over the last years, legislation in this area has been rapidly developing, providing better opportunities for economic and social realization of individuals with disabilities. The main goal of a social enterprise is to make a significant social impact on the standard of living of these persons providing them with employment and moral support. Social enterprises create suitable conditions for the professional development and social inclusion of individuals with disabilities.

In recent years social entrepreneurship has gained increased importance for the development of economic processes. EU and national institutions take different actions for social inclusion of people with disabilities by satisfying their social, cultural and legal needs. These actions are guided by strategies, which have been elaborated by institutions at national level. The implementation of strategies and actions for social inclusion of individuals with disabilities requires legal regulation at EU and national level. On the basis of different method of research (comparative analysis, legal analysis and others) the report investigates EU and Bulgarian legislation in the field of social entrepreneurship. The legal framework has been viewed as an institutional basis and opportunity for satisfying the cultural, social and legal needs of persons with disabilities in Bulgaria, which will contribute to the creation of new value added in economic and social context.

The newly adopted Law on the Social and Solidarity Economics, which was passed in 2018 and becomes effective as of 5th May 2019, creates in Bulgaria a new branch-the Social and Solidarity Economics with specific legal and organizational forms and structures to carry out businesses. The new Law is expected to be a gain changer and substantially improve the opportunities for professional and economic realization of individuals with disabilities.

Keywords: *people with disabilities, legislation, social enterprise, social entrepreneurship*

JEL Codes: *A13, B55, L31*

Introduction

Globalization has a major impact on the modern economic, political and social environment, which leads to convergence of the various economies on a global scale. Inevitably, as a result of these processes within the European Union, the idea of the importance and the benefits of social entrepreneurship is developed as an opportunity for economic activity that mixes the ingenuity of the business with the social mission and establishes a balance of the social and the economic goals.

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Social enterprises are relatively new economic structures for the Republic of Bulgaria. Their appearance should be considered in the context of European Union policy, which is related to the Communication from the European Commission of 3th March 2010, entitled "Europe 2020: A strategy for smart, sustainable and inclusive growth" and with "Social Business Initiative - Creating a favorable climate for social enterprises, key stakeholders in the social economy and innovation". After adoption of the above-mentioned documents, the European Union continues with the legal regulation and implementation of relevant policies.

Social entrepreneurship creates a favorable environment for the integration of people from vulnerable groups, provides opportunities for their social integration, raising their standard and their quality of life. In general, it provides an opportunity for the social inclusion of people, who are socially excluded from society. The main challenge, which faces people with disabilities, is their employment in an integrated work environment and the provision of an adequate support for workers and employers. The difficulties of disabled people are actually the result of the interaction between a closed society and individuals. For example individuals who use a wheelchair, meet obstacles in finding a job because the urban environment is not sufficiently available to them.

The importance of the research should be emphasized because it focuses on the legal possibility of social inclusion of people with disabilities in social enterprises and the challenges they face. The paper is focused on the social practices and the legislation in the sphere of social and solidarity economy, seen as key tools for implementing policies purposed to the basic needs, benefits and services of people with disabilities.

An important feature of all social enterprises is the particular symbiosis they bear between financial viability and the ability to cause a social impact. In this way, they achieve simultaneous realization of economic, financial and social goals, thus acquiring an even greater value for the society. Social entrepreneurship provides another insight into economic activity, in terms how to combine the desire to make a profit, and at the same time to achieve different social goals by skillfully searching a balance between social effect and economic goals. The social enterprises can organize a large group of people and via their work achieve results that are unattainable for other types of enterprises.

1. European Union legislation for encouraging the social entrepreneurship for people with disabilities

The mission of the United Nations Convention on the Rights of Persons with disabilities is primarily to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities and to promote respect for human dignity. The Convention aims a change in attitudes and approaches to persons with disabilities. They are not regarded as "object" of charity, treatment and social protection, but as subjects with rights, who are capable of claiming those rights and making decisions for their lives, based on their free and informed consent, and be active members of society. Convention gives universal recognition of the dignity of persons with disabilities.

The Convention was formed based on the basic principles and accordingly the corresponding rights and obligations. A basic principle is the full and effective participation and inclusion in society of the people with disabilities. Another fundamental principle in the field of human rights, acting in full force is the prohibition of discrimination (direct and indirect). To put this principle into practice, important are the reasonable facilitation, made for the benefit of persons with disabilities. Reasonable facilitation is all necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden to the others, where needed in each case to ensure to the persons with disabilities full and equal basis with others enjoyment or exercise of all human rights and fundamental freedoms. People with

disabilities should be given equal access to justice, education, health, rehabilitation, independent living and inclusion in the community, freedom of expression and opinion, freedom of access to information, work and employment, adequate standard of living and social protection, participation in political and public life, participation in cultural life, sports, recreation and leisure.

Following EU membership of the Republic of Bulgaria, European law is relevant in our country. The regional development policy is one of the European Union's most important policies which have been developing vigorously in the last two programming periods and it is implemented through legislation. This trend is particularly strong in 2013, just before the start of 2014-2020 financial frameworks and the Europe 2020 strategy. All things considered, there has been a remarkable growth in social enterprise. For this reason, much of the European legislation for the regional development, particularly the European Investment Funds there, has been legally regulated in the last 10-15 years. As a part of this investment policy, the European Union gives the opportunity to develop social enterprises in its underdeveloped regions by legal regulation.

One of the possibilities for social inclusion of people with disabilities is the social enterprises, whose sustainable development is promoted by EU policies. Some of the European regulations that govern social enterprises are: Decision No 283/2010 / EU of the European Parliament and of the Council of 25 March 2010 establishing a European Progress Microfinance Facility for employment and social inclusion. In accordance, "The ongoing efforts of the Union and of the Member States need to be strengthened to increase the access to, and availability of, microfinance to a sufficient scale and within a reasonable time-frame so as to address the high demand of those who need it most in this period of crisis - that is, those who have lost their job, those at risk of losing their job or who have difficulties entering or re-entering the labour market, as well as those who are facing the threat of social exclusion or vulnerable people who are in a disadvantaged position with regard to access to the conventional credit market and who want to start or further develop their own micro-enterprise, including self-employment - whilst actively promoting equal opportunities for women and men". And it continues with: "underlined the need to offer a new chance to unemployed persons and open the road to entrepreneurship for some of Europe's most disadvantaged groups who have difficulty in accessing the conventional credit market…" The Commission therefore announced a proposal for a new EU-wide microfinance facility (hereinafter the Facility) to extend the outreach of microfinance to particular at-risk groups and to further support the development of entrepreneurship, the social economy and micro-enterprises.

The Decision No 283/2010/EU of the European Parliament relates specifically to disadvantaged people: "An increasing amount of microfinance to vulnerable people who are in a disadvantaged position with regard to access to the conventional credit market in the European Union is provided by non-commercial microfinance institutions, credit unions and banks implementing corporate social responsibility. The Facility should help these providers, which supplement the commercial banking market, by increasing the availability of microfinance to meet the current levels of demand." (Bencheva, N., 2016; Vunova, K. i dr., 2013; Vunova, K. i dr., 2017).

Apparently, the Decision No 283/2010/EU of the European Parliament establishes a pattern for the financing of disadvantaged people enterprises. This Decision was amended by Regulation (EU) No 1296/2013 of the European Parliament and of the Council of 11 December 2013 on a European Union Programme for Employment and Social Innovation ("EaSI") and amending Decision No 283/2010/EU establishing a European Progress Microfinance Facility for employment and social inclusion (Text with EEA relevance) in order to relate the social policy to Europe 2020.

The next series of legislations are from 2013. Regulation (EU) No 228/2013 of the European Parliament and of the Council of 13 March 2013 lays down specific measures for agriculture in the outermost regions of the Union and repealing Council Regulation (EC) No 247/2006. In accordance to this Regulation "Support for traditional sectors is more necessary because it enables them to remain competitive on the Union market in relation to competition from third countries."

Particularly, the activity of social enterprises is regulated by the Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds (Text with EEA relevance). Art. 1 of this Regulation defines the objective of funding (supporting) social enterprises: "Increasingly, as investors also pursue social goals and are not only seeking financial returns, a social investment market has been emerging in the Union, comprising, in part, investment funds targeting social undertakings. Such investment funds provide funding to social undertakings that act as drivers of social change by offering innovative solutions to social problems, for example by helping to tackle the social consequences of the financial crisis, and by making a valuable contribution to meeting the objectives of the Europe 2020 Strategy set out in the Commission Communication of 3 March 2010 entitled 'Europe 2020: A strategy for delivering smart, sustainable and inclusive growth". Art. 2 of this Regulation states: "This Regulation is part of the Social Business Initiative established by the Commission in its Communication of 25 October 2011 entitled 'Social Business Initiative - Creating a favorable climate for social enterprises, key stakeholders in the social economy and innovation". The Regulation introduces common rules for the financing of social enterprises throughout the European Economic Area and encourages their development. Art. 13 defines the aim of the social enterprises: "As the principal objective of social undertakings is to have a positive social impact rather than to maximize profits this Regulation should only promote support for qualifying portfolio undertakings that have the achievement of a measurable and positive social impact as their focus. A measurable and positive social impact could include the provision of services to immigrants who are otherwise excluded, or the reintegration of marginalized groups into the labour market by providing employment, training or other support. Social undertakings use their profits to achieve their primary social objective and are managed in an accountable and transparent way. Where, on an exceptional basis, a qualifying portfolio undertaking wishes to distribute profits to its shareholders and owners, it should have predefined procedures and rules on how profits are to be distributed. Those rules should specify that such distribution of profits does not undermine the primary social objective of the qualifying social portfolio undertaking." Art. 14 determines the social enterprise: "Social undertakings include a large range of undertakings, taking various legal forms, which provide social services or goods to vulnerable, marginalized, disadvantaged or excluded persons. Such services include access to housing, healthcare, assistance for elderly or disabled persons, child care, access to employment and training as well as dependency management. Social undertakings also include undertakings that employ a method of production of goods or services which embodies their social objective, but the activities of which be outside the realm of the provision of social goods or services. Those activities include social and professional integration by means of access to employment for people disadvantaged in particular by insufficient qualifications or social or professional problems leading to exclusion and marginalization. Those activities may also concern environmental protection with a societal impact, such as anti-pollution, recycling and renewable energy."

In accordance to Regulation (EU) No 1287/2013 of the European Parliament and of the Council of 11 December 2013 establishing a Programme for the Competitiveness of Enterprises and small and medium-sized enterprises (COSME) (2014 - 2020) and repealing

Decision No 1639/2006/EC (Text with EEA relevance): "Small and medium-sized enterprises (SMEs) should play a crucial role in reaching the Europe 2020 Strategy objectives".

The above-mentioned regulations establish tendency to influence on the EU economy and the engagement with social functions through the law.

2. Bulgarian Legislation in the sphere of social entrepreneurship for people with disabilities

According to the UN Convention on the Rights of Persons with Disabilities"people with disabilities are people with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others". The word "cripple" is removed from the Bulgarian legislation and this contributes to the overcoming stereotypical thinking about people with disabilities as people - unable, cripple, unfit. Thus society would make a positive step towards social inclusion of people with disabilities and their realization as full citizens, as in the presence of a demographic crisis, every measure of inclusion of all people in Bulgaria should be supported and encouraged. The Law on People with Disabilities has introduced a legal definition of the term "person with a permanent disability".

For persons with disabilities in Bulgaria, the right to independent living is not fully respected. The majority of them live with their families and cannot choose where and with whom to live. Those who have no families or who cannot live with them are moved to social care institutions or residential community-based services where they are placed either involuntarily or without any right to choose. A slowly growing tendency is for persons with disabilities to live in "protected homes" or "family-type accommodation centres" (small group homes that are meant to be an alternative to large institutions) in the community, which do not provide more opportunities for independent living in practice. Access to community-based services is not guaranteed to all potential users and the quality of care provided in them is generally low, with a few exceptions.

Persons with disabilities are not provided with real opportunities for vocational training or employment on the open labour market and this is waste of their human potential (Parvanov, P., Krastev, V., Atanasova, I., 2018). State funding and attention are mainly focused on specialized enterprises and the promotion employment measures (subsidized employment) on the open labour market which do not prove to be effective.

The main priorities of the Bulgarian National Strategy for Persons with Disabilities 2016-2020 are:

- Providing an accessible living environment, to transportation and transportation services, to information and communications.
- Ensuring equal access including educational environment at all levels and opportunities for lifelong learning.
- Ensuring effective access to quality health services.
- Providing conditions for employment of people with disabilities.
- Providing adequate support for community living.
- Providing access to sports, recreation, tourism and participation in cultural life.

The integration on the labor market of people with disabilities is one of the main tools for their integration in all areas of public life. Employment is linked with the provisions of art. 27 "Work and employment" of the Convention on the Rights of Persons with Disabilities. The main activities under this priority include:

- Providing appropriate forms of training and retraining.

This means that for people with disabilities to participate more actively in the labor market, it is necessary that they be granted access to the education system.

Some of the actions, according to Priority 4 are:

- Analysis of employment opportunities for people with various disabilities.
- Determining the types of activities that people with disabilities can carry out, depending on their disability.
- Preparation and implementation of training programs.

Construction of training centers.

- Adapting existing centers of adequate training process.
- Providing places for practical training.
- Incentives to employers, who conduct training and retraining courses for people with disabilities.
- Training of employers and employees to work with people with disabilities.

Implementation of the strategic and operational objectives of the strategy can be achieved by introducing and developing three forms of employment for people with disabilities- protected employment, supported employment and independent business activity of people with disabilities, as well as through continued implementation of the planned in the National Plan for employment actions, projects, programs and measures.

Protected employment is suitable for providing jobs for people with severe and complex disabilities, and sheltered workshops are places excluded from the competitive market. The measures include:

- Creating conditions for the introduction of protected employment.
- Developing a mechanism for determining economic sectors for working in protected enterprises.
- Determination of programs to create protected employment within which contracting authorities may reserve contracts (pursuant to Directive 2009/81 / EC of the European Parliament and of the Council of 13 July 2009; Directive 2014/24 / EC of the European Parliament and the Council of 26 February 2014; Directive 2014/25 / EC of the European Parliament and of the Council of 26 February 2014).
- Determination of programs to create protected employment for people with disabilities via reserved concessions (pursuant to Directive 2014/23 / EC of the European Parliament and of the Council of 26 February 2014 for appointment of concession contracts).
- Developing a system of incentives for municipal administrations to introduce this type of employment.
- Obtaining protected employment.
- Introduction of individual approach in determining the type of work for each person with a disability.

Specialized enterprises and cooperatives are equal in the labor market as an essential form of providing permanent employment to the target group. Despite the fact that they enjoy tax preferences and receive state subsidies, the number of employed people with disabilities at these enterprises is constantly decreasing. This fact brings forwards the question of the need to diversify the forms of employment in this aspect, taking into account the interests of all stakeholders in this process.

Employment in common work environment suggests fastest socialization of people with disabilities, but it is very difficult to apply it in times of crisis. It is, therefore necessary to lay down clear and binding rules on employment of people with disabilities by quotas. The experience of the European countries shows that within the social economics, the so called social enterprises exist and they offer employment and representing innovative practices.Similar enterprises could be developed in Bulgaria. The measures include:

- Discussing the possibilities of introducing a quota system for the employment of people with disabilities to all employers from the common working environment, including state and municipal administrations.
- Implementation of employment programs at national and local level to create jobs by providing permanent employment for people with disabilities in the labor market.
- Implementation of incentives for employers to provide more long-term and quality employment.
- Expanding the scope of services, offered by labor offices employers including social enterprises.
- Conducting media campaigns to change the attitudes of employers regarding employment of people with disabilities in the labor market.
- Providing additional incentives for employers hiring people with disabilities.
- Provide additional incentives for employers to adapt the workplace to the needs of people with disabilities.

Homeworking and distance working, according to the Bulgarian Labor Code are very suitable for people of working age with a high degree of reduced capacity. Home-based form of employment for people with disabilities is used in specialized enterprises and cooperatives for people with disabilities since their creation. This form has proven its effectiveness, but unfortunately in recent years is limited due to the lack of appropriate orders and workload of production capacity. Distance working in modern society of rapidly developing information technology is a very promising form of work, especially for people with severe disabilities. On the one hand, these forms are avoided because of architectural barriers, the need for specialized transportation, etc. The measures, according to the strategy are:

- Creating conditions for expanding opportunities for homeworking and distance working.
- Developing a mechanism for determining the appropriate economic sectors.
- Developing a system of incentives for employers providing homeworking and distance working.
- Informing the public about home-based and distance form of employment.
- Introduction of individual approach in determining the type of work for each person with disability.
- Providing incentives for people with disabilities who can cope with themselves.

Independent business activity should be encouraged, developed and funded by both the state and local authorities. Local government has incentives to promote microenterprises for people with disabilities by facilitating the licenses (permits) and the coordination regimes that are carried out.

In Bulgaria the main regulation is the new Law on Persons with Disabilities (December 2018), which replaced the Law on Integration of Persons with Disabilities.

The motives for the new law are that it provides all measures of support to be carried out from one body, to adequately support people with disabilities and enables the state to more effectively organize and coordinate the policy on their inclusion. It also emphasizes that the rights of people with disabilities should be ensured in a manner that respects their human dignity by applying individual approach and assess their needs.

It provides the establishment of a specialized body to prepare individual assessment of the needs of people with disabilities. The body will start working from the beginning of 2021 and will coordinate the work of different institutions.

A Monitoring Board is created to ensure protection of the rights of people with disabilities. According to the law there will be two representatives, appointed by the Ombudsman and the Commission for Protection against Discrimination, four representatives

of the representative organizations of and for people with disabilities, and one - determined by the Bulgarian Academy of Sciences. To assess the individual needs for independent living, mechanism for providing the type of support will change. The goal is the budget to be spent with greater benefits for the individuals in need.

It is envisaged that all financial aid granted now (social disability pension, allowances for transport, communications, medicine, etc.) to unite into a single monthly payment, which will be tied both to the degree of disability, and to the poverty line. Thus it is ensured that the amount will be indexed each year. Targeted funds for aids and medical devices (hearing device, strollers, car retrofitting, etc.) that have so far been disbursed by the Social Assistance Agency, since the beginning of 2020 are transferred now to the Ministry of Health, which is better able to assess quality range of medical devices.

The Law introduces a "quota workforce", which aims to increase the employment of people with disabilities. The project texts remained challenged by the Bulgarian Industrial Association, according to which an employer with 26 to 50 employees is obliged to employ a person with a disability, those with up to 99 workers - two, and an employer with more than 100- 2% of the workforce. If the employer has not fulfilled its quota, he/she will pay each month to the State 30% of the minimum wage. A quota principle is introduced for employing people with disabilities, according to which employers with 20 to 49 workers, should assign at least one person with a disability, with 50 to 99 - two, 100 and more than 100 - four percent of the average composition of employees. If these quotas are not met, the employer pays each month to fund the Agency for Persons with Disabilities fee of 80 percent of the minimum salary for each non-designated person with a disability. At the same time, it is proposed, the requirements of the Labor Code requiring dismissal of a person with a disability to be agreed in advance with the labor inspectorate should be dropped off. The reason is that the text is an obstacle for the recruitment of such people by the employers.

According to Art. 47 of the Bulgarian Law on Persons with disabilities - the state and local authorities support and encourage the employment of persons with disabilities by creating conditions for the activity of specialized enterprises and cooperatives of people with disabilities and the labor-treatment bases via appropriate economic incentives, financial relieves under the current legislation and other supportive incentive measures.

The Bulgarian legislation, in the social sphere, by 2018 has not given any clear and precise, legal definition of the term "social enterprise". This legislative omission had a negative effect both on the legal status of the "social enterprise" as a legal entity and on the issues concerning the conditions, the organization and the order in which it can interact with the central and local authorities. However, without the necessary legal regulation, which contains the relevant characteristics of the activity of the social enterprises, it was extremely difficult and unreliable to define a certain legal entity as a social enterprise.

The draft Law on Enterprises of the Social and Solidarity Economy was voted at second reading at the end of the 2018 year and after its approval by the Bulgarian Parliament was promulgated on 02.11.2018 and will enter into force on 04.05.2019. By its adoption, the discussion on which legal entities could be defined as social enterprises was terminated and the practice of self-determination of enterprises as social ones ceased. Social enterprises are defined as subjects of the social and solidarity economy, along with cooperatives and non-profit legal entities. Last but not least, the new principle of division of two classes should be mentioned: class A and class A+ and the creation of a special register for the social enterprises as well.

The law regulates the social relations, related to the social and solidarity economy, the types of subjects and the measures for their promotion, as well as the terms and conditions for the activity of the social enterprises. The new legislation aims to stimulate enterprises that

provide employment to specifically listed groups of individuals in the Art. 7 of the Law on Enterprises of the Social and Solidarity Economy, specifically those with permanent disabilities and those who raise children with permanent disabilities; long-term unemployed individuals entitled to monthly social assistance, individuals under the age of 29 who have no previous professional experience and unemployed over 55 years of age; individuals who have been subjected to a term of imprisonment of not less than five years, homeless, as well as drug-addicted individuals or alcohol dependent; children placed outside of a family, foreigners who have received protection in the Republic of Bulgaria as victims of trafficking and those, who are victims of domestic violence.

The new law aims to promote the development of the social and solidarity economy as an economic sector. According to the report on the overall preliminary assessment of the impact of the law, social enterprises are expected to generate approximately 2% of Bulgaria's gross domestic product as well as to improve access to employment and training, to acquire or improve professional qualifications, to create conditions to support those already listed for their social inclusion. It is essential to achieve a reduction in social inequality and sustainable territorial development of social enterprises, as promoted by good European practices in this field.

In the law, the "social and solidarity economy" is defined as a form of entrepreneurship, targeted at one or more social activities and / or social objectives performed by enterprises, including the production of different goods or the provision of services in cooperation with state or local authorities or independently.While business creation and self-employment are not suitable for all people with disabilities, there are several ways in which policymakers can improve their support for entrepreneurship for people with disabilities (Todorov. I, Parvanov, P., Krastev, V., at all, 2019).

The basic principles of the law are: domination of social over economic objectives; association for public and/or collective benefit; publicity and transparency; independence from the state authorities; participation of the members and the employees in making managerial decisions.

Conclusion

A key point concerning the nature and importance of the social enterprise is its legal regulation. Despite the single policy and legislation of the European Union, each Member State alone makes an assessment exactly what legislation and policy to create in terms of social enterprises and how an effective, sustainable inclusion of people with disabilities will be achieved. It is necessary to implement more measures to encourage employers to hire people with disabilities.

Although some efforts had been made the Bulgarian disability legislation is still far from the philosophy of the UN Convention as it mainly considers persons with disabilities as nonable and object of social assistance schemes. Far more radical and holistic approach needs to be applied in elaboration of legislation and policies especially in the field of personal and social assistance, independent living, support in decision making, education, and employment of persons with disabilities. A challenge is the establishment of coordination between different institutions in implementing the mainstreaming approach in policy and the strengthening of municipal and regional authorities.

Hopefully the enactment of a specific new legislation will foster the development of opportunities in the area of social entrepreneurship through the stimulation of social enterprises. The new legislation is promising a friendly policy environment, which is crucial for the development of the social insertion activities for people with disabilities. The new legislative framework will definitely bring positive changes, but profound changes are

necessary in the political vision, as well as in the manner in which public authorities support social entrepreneurship (Lambru, M. & Petrescu, 2012). It is necessary and of crucial importance to coordinate the efforts of the state, the non-government entities, the civil entities, the representatives of the private sector, and the representatives from the academic community.

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